

VERBATIM ¹RECORD OF TRIAL ²

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

[REDACTED]

(Social Security Number)

PFC/E-3

(Rank)

Headquarters and

Headquarters Company,

United States Army Garrison

(Unit/Command Name)

U.S. Army

(Branch of Service)

Fort Myer, VA 22211

(Station or Ship)

By

GENERALCOURT-MARTIAL

Convened by

Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

Date or Dates of Trial:

23 February 2012, 15-16 March 2012, 24-26 April 2012, 6-8 June 2012, 25 June 2012, 16-19 July 2012, 28-30 August 2012, 2 October 2012, 12 October 2012, 17-18 October 2012, 7-8 November 2012, 27 November - 2 December 2012, 5-7 December 2012, 10-11 December 2012, 8-9 January 2013, 16 January 2013, 26 February - 1 March 2013, 8 March 2013, 10 April 2013, 7-8 May 2013, 21 May 2013, 3-5 June 2013, 10-12 June 2013, 17-18 June 2013, 25-28 June 2013, 1-2 July 2013, 8-10 July 2013, 15 July 2013, 18-19 July 2013, 25-26 July 2013, 28 July - 2 August 2013, 5-9 August 2013, 12-14 August 2013, 16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

1 commission of the offense, including those reasons for committing the
2 offense which do not constitute legal justification or excuse.
3 Matters in mitigation of an offense are reasons to lessen the
4 punishment of an offense or to furnish grounds for recommendations of
5 clemency.

6 6. Sentencing Relaxed Rules. Rules for Court-Martial
7 1001(c)(3) authorizes the military judge, with respect to matters in
8 extenuation or mitigation or both, to relax the rules of evidence.
9 This may include admitting letters, affidavits, certificates of
10 military and civil officers, and other writings of similar
11 authenticity and reliability. R.C.M. 1001(c)(4) provides that when
12 the rules of evidence have been relaxed for the Defense, they may be
13 relaxed during rebuttal and surrebuttal to the same degree.

14 7. Executive Order 13526 governs Classified National
15 Security Information. Only OCAs are authorized to determine what
16 information is originally classified in accordance with Executive
17 Order 13526 and the level of classification. Under Executive Order
18 13526, when an OCA classifies information at the Secret level, the
19 OCA determines that unauthorized disclosure of the information could
20 reasonably be expected to result in damage to the national security
21 and identifies or describes the expected damage.

22 8. Executive Order 13526 Part 2 governs Derivative
23 Classification. Persons who reproduce, extract, or summarize

classified information or who apply classification markings derived from source material or as directed by a classification guide need not be OCAs.

9. Section 1.8 of Executive Order 13526 establishes procedures for authorized holders of information to challenge classifications they believe, in good faith, are improperly classified. These procedures do not include self-help communication of classified information such persons believe is improperly classified to those not authorized to receive the classified information.

10. For 18 U.S.C. Section 793(e), classification may demonstrate that an accused has reason to believe that information relates to the national defense and could cause harm to the United States. Not all information that is contained in a classified or closed computer system pertains to national defense. Not all information marked as classified, in whole or in part, may, in fact, meet the criteria for classification. Information not marked classified may meet the standards for classification and protection, particularly with respect to information received through oral means or information the recipient should have reason to believe warrants protection. *United States v. Diaz*, 69 M.J. 127 2010.

Conclusions of Law - Evidence of Over-Classification on the Merits:

1 1. Evidence of general over-classification is not relevant
2 to the nature of the information allegedly communicated in the
3 specifications alleging violations of 18 United States Code
4 Specification 793(e) and 1030(a)(1). There is no nexus between
5 general over-classification and the information allegedly
6 communicated in this case.

7 2. Evidence of general over-classification is not relevant
8 to whether the information charged in the specifications alleging
9 violations of 18 United States Code Section 793(e) relates to the
10 national defense and was closely held. Information does not have to
11 be classified to relate to the national defense. However, it does
12 have to be closely held by the Government. Original classification
13 of information by an OCA in accordance with Executive Order 13526 is
14 evidence that the communicated information was closely held by the
15 U.S. Government. It is not conclusive and can be rebutted by
16 evidence that the information was made public by Congress or an
17 Executive Branch agency and that the information may have been found
18 in sources lawfully available to the general public at the time of
19 charged communication. However, evidence of general over-
20 classification goes to whether information should be closely held by
21 the United States, not whether it was closely held at the time of the
22 charged communication. Whether information should be closely held is

1 a proper determination for the Executive and Legislative branches and
2 is not at issue before this Court.

3 3. Public Law 111-258 did not make any changes to the
4 classification criteria in Executive Order 13526. Facts at issue are
5 whether each OCA properly classified the relevant information in
6 accordance with EO 13526 and whether any derivative classifications
7 of that information were conducted in accordance with Executive Order
8 13526 and the relevant derivative classification guides.

9 4. Whether evidence that public law 111-258 was enacted in
10 response to Congressional concerns about over-classification and the
11 substance of that law is relevant to bias of an OCA under M.R.E.
12 608(c) is not ripe for consideration. Similarly, whether Mr.
13 Leonard's statement and/or oral testimony given at the 2007 House
14 Committee on Homeland Security Hearings is relevant on the merits to
15 cross-examine OCA witnesses is not ripe for consideration. The Court
16 defers ruling on these issues until such time as they are ripe. As
17 set forth below, Mr. Leonard's statement and oral testimony, if
18 relevant, are admissible under M.R.E. 803(8) as a hearsay exception.

19 5. The testimony of Mr. Cassius Hall and Mr. Charles
20 Ganiel as proffered by the defense does not address general over-
21 classification. The Court will make determinations regarding the
22 scope of Mr. Galbraith's testimony if and when he testifies.

6. Evidence of general over-classification bearing no particularized nexus to the classified information at issue is not otherwise relevant as substantive evidence on the merits. Even if relevant, the probative value of evidence of such general over-classification is substantially outweighed by the danger of confusing the issues at trial in accordance with M.R.E. 403.

Conclusions of Law - Evidence of Over-Classification on Sentencing:

R.C.M. 1001(c)(1)(a) allows the Defense to present matters in extenuation serving to explain the circumstances surrounding the commission of the offense, including those reasons for committing the offense that do not constitute legal justification or excuse. At this point, there is no evidence before the Court that the accused was aware of any general over-classification problem or that such awareness influenced his intent or motive. The Court defers ruling until the matter is ripe for adjudication during sentencing.

Defense motion for Judicial Notice of H.R. 553 and Congressional Hearings Discussing Classification.

1. On 16 November 2012, the Defense filed a motion, pursuant to Military Rules of Evidence 201, 201(a), and 803(8) for the Court to take judicial notice of H.R. 553, the Reducing Over-Classification Act, and transcripts of the House Committee meetings on the Espionage Act, 16 December 2010, and transcripts of the house committee meetings -- I'm sorry, on Over-Classification 22 March, 26

1 April, and 26 June 2007. Defense argues this information is relevant
2 on the merits to rebut evidence that the accused knew or should have
3 known that a document could cause injury to the United States or
4 benefit a foreign nation based solely on the document's
5 classification. The Defense further posits that this information is
6 relevant to sentencing in that evidence that the classification
7 system was broken and its condition had negative consequences for the
8 nation would tend to shift some of the culpability from the accused
9 to the system itself, thus tending to lower his punishment.

10 2. On 30 November 2012, the government filed a response
11 opposing the Defense motion. The government argues that the defense
12 motion should be denied because the law and the statements and
13 testimony in the Congressional record are irrelevant. The government
14 requests the Court to find the House Committee meeting testimony and
15 statements to be inadmissible hearsay not qualifying for admission
16 pursuant to M.R.E. 803(8). The government further avers that, as a
17 general proposition, it is appropriate for a Court to take judicial
18 notice of the law insofar as it exists, is relevant, and that a
19 Congressional record presents an accurate account of testimony.
20 Finally, the government avers that judicial notice is not appropriate
21 for the truth of the matter asserted.

22 3. After considering the filings and evidence presented by
23 the parties and argument of counsel, and the ruling of the Court with

1 respect to the government Motion to Preclude Over-Classification, the
2 Court finds and concludes as follows:

3 Findings of Fact: Public Law 258 and Reducing Over-
4 Classification Act.

5 1. On 7 October 2010, President Obama signed H.R. 53, the
6 Reducing Over-Classification Act into law. On that date, the Act
7 became Public Law 111-258.

8 2. The Reducing Over-Classification Act requires the
9 Secretary of Homeland Security to develop a program to prevent the
10 over-classification of homeland security information. While the main
11 thrust of the legislation is directed at the Department of Homeland
12 Security, the legislation also contains several other provisions
13 relating to accurate classification of information that each
14 executive agency that handles classified information is required to
15 follow. See, e.g., P.L. 111-258, section 7 "The head of each
16 Executive agency, in accordance with Executive Order 13526, shall
17 require annual training for each employee who has original
18 classification authority."

19 3. Section 2 of public law 111-258 also contains several
20 Congressional findings. Among these findings are:

21 (1) The National Commission on Terrorist Attacks Upon the
22 United States, commonly known as the 9/11 Commission, concluded that

1 security requirements nurture over-classification and excessive
2 compartmentalization of information among agencies.

3 (2) The 9/11 Commission and others have observed that the
4 over-classification of information interferes with accurate,
5 actionable, and timely information sharing, increases the cost of
6 information security; and needlessly limits stakeholder and public
7 access to information.

8 (3) Over-classification of information causes considerable
9 confusion regarding what information may be shared with whom, and
10 negatively affects the dissemination of information within the
11 federal government and with state, local, and tribal entities, and
12 with the private sector.

13 16 December 2010 House Committee Testimony of Mr. Thomas
14 Blanton:

15 1. On 16 December 2010, the U.S. House of Representatives
16 Committee on the Judiciary held a hearing entitled Espionage Act and
17 the Legal and Constitutional Issues Raised by WikiLeaks. The hearing
18 featured seven witnesses, one of whom was Mr. Thomas Blanton,
19 Director, National Security Archive, George Washington University.

20 2. In his testimony, Mr. Blanton stated, among other
21 things, that the government always overacts to leaks, that the
22 government's national security classification system is broken, and
23 we are well into a syndrome that one senior government official

1 called 'Wikimania' where Wikimythys are common and there is far more
2 heat than light, heat that will eventually produce more leaks, more
3 crackdowns, less accountable government, and diminished security.
4 Mr. Blanton's testimony and his statement repeat statements made by
5 Governor Thomas Kean, Secretary of Defense Robert Gates, the editors
6 of Le Monde and The Guardian, Secretary of Defense Donald Rumsfeld's
7 deputy for intelligence and security, and Harvard Law Professor Jack
8 Goldsmith.

9 3. Mr. Blanton's oral and written testimony was published
10 in the hearing transcript verbatim, without modification by the
11 Chairman of the committee.

12 House Homeland Security Subcommittee Hearings on Over-
13 Classification:

14 1. On 22 March, 26 April, and 28 June, 2007, the U.S.
15 House of Representatives Homeland Security Subcommittee on
16 Intelligence, Information Sharing, and Terrorism Risk Assessment held
17 a three-part hearing on Over-Classification and Pseudo-
18 Classification.

19 2. The Hearing included statements from the following
20 subcommittee members: The Honorable Jane Harman, The Honorable David
21 G. Reichert, The Honorable Bennie G. Thompson, The Honorable Charles
22 W. Dent, The Honorable Christopher P. Carney, and the Honorable
23 James R. Langevin.

1 3. As part of these hearings, a number of agency and
2 private witnesses with knowledge of classification activities were
3 invited to provide oral and written testimony. Specifically, the
4 hearings featured testimony from:

5 a. Mr. Scott Armstrong, Founder, Information Trust, 22
6 March 2007.

7 b. Ms. Meredith Fuchs, General Counsel, The National
8 Security Archive, George Washington University, 22 March 2007.

9 c. Mr. J. William Leonard, Director Information Security
10 Oversight Office, National Archives and Record Administration (NARA),
11 22 March 2007.

12 d. Mr. Michael P. Downing, Assistant Commanding Officer,
13 Counter-Terrorism/Criminal Intelligence Bureau, Los Angeles Police
14 Department, 22 March 2007.

15 e. Chief Cathy Lanier, Metropolitan Police Department,
16 Washington, DC:, 22 March 2007.

17 f. Ambassador Thomas E. McNamara, Program Manager,
18 Information Sharing Environment, Office of the Director of National
19 Intelligence, 26 April 2007.

20 g. Dr. Carter Morris, Director, Information Sharing and
21 Knowledge Management, Office of Intelligence and Analysis, U.S.
22 Department of Homeland Security, 26 April 2007.

1 h. Mr. Wayne M. Murphy, Assistant Director, Directorate of
2 Intelligence, Federal Bureau of Investigation, 26 April 2007.

3 i. Mr. Mark Zadra, Assistant Commissioner, Florida
4 Department of Law Enforcement, 26 April 2007.

5 j. Mr. Mark Agrast, Senior Fellow, Center for American
6 Progress, 28 June 2007.

7 k. Mr. Scott Armstrong, Founder, Information Trust, 28
8 June 2007.

9 l. Mr. J. William Leonard, Information Security Oversight
10 Office, National Archives and Records Administration, 28 June 2007.

11 m. Ms. Suzanne E. Spaulding, Principal, Bingham Consulting
12 Group, LLC, 28 June 2007.

13 The Law. The Court incorporates the law as stated earlier
14 in the Government Motion to Preclude Evidence of Over-Classification
15 and adds the following:

16 Judicial Notice/Adjudicative Facts:

17 1. M.R.E. 201 governs judicial notice of adjudicative
18 facts. The judicially noticed fact must be one not subject to
19 reasonable dispute in that it is either: one, generally known
20 universally, locally, or in the area pertinent to the event; or two,
21 capable of accurate and ready determination by resort to sources
22 whose accuracy cannot be reasonably questioned. *United States v.*

1 *Needham*, 23 M.J. 383 Court of Military Appeals 1987; *United States v.*
2 *Brown*, 33 M.J. 706, Army Court of Military Review 1991.

3 2. M.R.E. 201(c) requires the military judge to take
4 judicial notice of adjudicative facts if requested by a party and
5 supplied with the necessary information.

6 3. When a military judge takes judicial notice of
7 adjudicative facts, the fact finder is instructed that they may, but
8 are not required to, accept as conclusive any matter judicially
9 noticed.

10 4. Judicial notice of adjudicative facts puts "a stamp of
11 judicial authority" on the evidence and effectively destroys the
12 other party's right to reasonably dispute the evidence. *United*
13 *States v. Richardson*, 33 M.J. 127 Court of Military Appeals 1991. As
14 such, judicial notice is not appropriate for inferences a party hopes
15 the fact finder will draw from the facts judicially noticed. Legal
16 arguments and conclusions are not adjudicative facts subject to
17 judicial notice. *United States v. Anderson*, 22 M.J. 885 Air Force
18 Court of Military Review 1985, stating appropriate to take judicial
19 notice of the existence of a treatment program at a confinement
20 facility but not appropriate to take judicial notice of the quality
21 of the program.

22 5. M.R.E. 201 governs judicial notice of adjudicative
23 facts, not legislative facts. An adjudicative fact is a fact that

1 normally goes to a jury in a jury case and relates to the parties,
2 their activities, and their businesses. Legislative facts do not
3 concern the immediate parties and are relied upon by courts when they
4 develop a particular law or policy. *United States v. Gould*, 536 F.
5 2d 216 8th Circuit 1976.

6 Judicial Notice: Domestic Law:

7 M.R.E. 201A(a) provides that a military judge may take
8 judicial notice of domestic law. This provision further provides,
9 however, that insofar as a domestic law is a fact that is of
10 consequence to the determination of the action, then the procedural
11 requirements of M.R.E. 201, except for section 201(g), apply.

12 Hearsay/Public Records and Reports:

13 M.R.E. 803(8) provides that "records, reports, statements,
14 or data compilations, in any form, of public office or agencies" are
15 not excluded under the hearsay rule if the records or reports set
16 forth:

17 (A) the activities of the office or the agency; or (B)
18 matters observed pursuant to duty imposed by law as to which there
19 was a duty to report, excluding, however, matters observed by police
20 officers and other personnel working in a law enforcement capacity;
21 or (C) against the government, factual findings resulting from an
22 investigation made pursuant to authority granted by law, unless the

1 sources of information or other circumstances indicate lack of
2 trustworthiness.

3 Conclusions of Law - Admissibility/Relevance:

4 Public Law 111-258 Admissibility:

5 Public Law 111-258 is a domestic law that the Court may
6 take judicial notice of in accordance with M.R.E. 201A. The
7 government posits that the "findings," Section 2, in this law are
8 legislative facts rather than adjudicatory facts and, therefore, are
9 not appropriate for judicial notice. This is certainly the case with
10 certain legislative materials that express merely personal opinions
11 or legal theories. In this case, however, the findings in the law
12 are taken from conclusions in the 9/11 Commission report, rather than
13 mere expressions of Congressional opinion. Furthermore, the findings
14 also stand independently for the fact that Congress believed over-
15 classification was a potential issue and passed this legislation-
16 which contains not just findings but specific statutory initiatives-
17 to address that issue. See, e.g., *City of Charleston v. A*
18 *Fisherman's Best Inc.*, 310 F. 3d 155, 172 4th Circuit 2002, taking
19 judicial notice of a National Marine and Fisheries Service final rule
20 that summarized Congressional intent for the 1996 reauthorization of
21 the Magnuson-Sevens Act. Accordingly, the Court is within its
22 discretion to take judicial notice of the findings in Section 2 of
23 Public Law 111-258 to the degree they are relevant. Such judicial

1 notice would be the adjudicative fact that Congress made the
2 findings, not that the findings are adjudicative fact.

3 2. Relevance: Public Law 111-258 was signed into law on 7
4 October 2010, after the dates of the charged offenses but prior to
5 the dates of the original classification reviews of the information
6 charged by the OCAs. In its ruling regarding the Government Motion
7 to Preclude Over-Classification, the Court deferred ruling on whether
8 evidence of general over-classification in Public Law 111-258 is
9 relevant to impeach OCA witnesses in accordance M.R.E. 608(c) and
10 whether evidence of general over-classification is relevant during
11 sentencing.

12 Thus, subject to a demonstration of relevance, the Court
13 will take judicial notice of the existence of Public Law 111-258, to
14 include the Congressional findings in Section 2, the date of
15 introduction of H.R. 255 and the date the law was enacted. The
16 Court will not take judicial notice of the truth of the matter
17 asserted in public law 111-258 as adjudicative facts.

18 Testimony of Mr. Thomas Blanton

19 The testimony of Mr. Thomas Blanton is not admissible under
20 M.R.E. 803(8)(A). While Mr. Blanton's testimony is part of an
21 official report, in this case a Congressional hearing, it does not
22 meet the other criteria of M.R.E. 803(8)(A). Specifically, his
23 testimony is not: One, a report of the activities of the office or

1 agency i.e., Congress; two, a matter observed by duty of law where
2 there was a duty to report; or three, factual findings against the
3 government made pursuant to an investigation pursuant to authority
4 under the law. Rather, Mr. Blanton's statement contains his personal
5 opinions reprinted verbatim in a hearing record. It is hearsay
6 within hearsay. To the extent Mr. Blanton repeats statements made by
7 Governor Thomas Kean, Secretary of Defense Robert Gates, the editors
8 of Le Monde and The Guardian, Secretary of Defense Donald Rumsfeld's
9 deputy for counterintelligence and security, and Harvard Law
10 Professor Jack Goldsmith, such statements are triple hearsay.

11 2. Relevance: Even if admissible, Mr. Blanton's prepared
12 statement and oral testimony occurred after the dates of the
13 communications alleged in the charged offenses. Mr. Blanton's
14 statement and oral testimony are not relevant on the merits or during
15 sentencing.

16 Admissibility of 2007 House Committee on Homeland Security
17 Hearing Transcripts:

18 1. Statements by Subcommittee Members: The statements by
19 subcommittee members are not admissible under M.R.E. 803(8). They do
20 not document the activities of Congress. They do not set forth
21 matters observed pursuant to duty imposed by law as to which matters
22 there was a duty to report, nor do they represent factual findings
23 resulting from investigation under authority granted by law. These

1 statements represent the personal opinions of individual subcommittee
2 members.

3 2. The testimony of Mr. Armstrong, Ms. Fuchs, Mr. Agrast,
4 and Ms. Spalding:

5 The oral testimony and prepared testimony of Mr. Armstrong,
6 28 March and 28 June 2007, Ms. Fuchs, Mr. Agrast, and Ms. Spaulding
7 are not admissible under M.R.E. 803(8)(A). The Defense states that
8 the transcripts "document the activities of Congress" and therefore
9 fall under M.R.E. 803(8)(A). The Congressional record of testimony
10 by these witnesses, however, does not document "activities" of
11 Congress. Rather, it merely reprints verbatim their personal beliefs
12 and opinions.

13 3. Testimony of Mr. Downing: The oral testimony and
14 prepared written statement of Mr. Downing are not admissible under
15 M.R.E. 803(8)(A). While it has been reprinted in an official
16 Congressional transcript, this does not cure the fact that the
17 testimony itself is not a record or report of the activities
18 conducted by the Los Angeles Police Department LAPD, rather, it is a
19 testimonial statement that details the general counter-intelligence
20 activities of the LAPD and makes certain recommendations regarding
21 declassification of information and further dissemination of those
22 documents to state and local law enforcement authorities.

1 4. Testimony of Chief Lanier: The testimony of Chief
2 Lanier is not admissible under M.R.E. 803(8)(A). Like the testimony
3 of Mr. Downing, it is not a record or report of the activities
4 conducted by the Washington, D.C., Metropolitan Police Department.
5 Instead, it is a testimonial statement that details the MPD's
6 counter-intelligence operations, and calls for specific changes to
7 allow further dissemination of classified documents to local law
8 enforcement agencies.

9 5. Testimony of Mr. Zadra. The testimony of Mr. Zadra is
10 not admissible under M.R.E. 803(8)(A). It is not an official record
11 or compilation of activities of the Florida Department of Law
12 Enforcement. Rather, it largely reflects Mr. Zadra's personal
13 opinion regarding the Controlled Unclassified Information framework
14 used by federal agencies.

15 6. Testimony of Ambassador McNamara, Dr. Morris and Mr.
16 Murphy: The testimony of Ambassador McNamara, Dr. Morris, and Mr.
17 Murphy is not admissible under M.R.E. 803(8)(A). The testimony is
18 not a compilation of the records or activities of the agencies that
19 the witnesses represent. Rather, each set of testimony consists
20 mainly of a summary of completed agency action to deal with problems
21 involving CUI. The testimony is also irrelevant. The specifications
22 against the accused concern classified information, not CUI.
23 Accordingly, the argument in the testimony that CUI is sometimes

1 mismarked does not help disprove any element of the specifications
2 charged.

3 7. Testimony of Mr. Leonard, 22 March 2007: The 22 March
4 testimony of Mr. Leonard is admissible under M.R.E. 803(8)(A) if
5 relevant. It can be distinguished from the other testimony by two
6 key attributes.

7 a. First, unlike other witnesses, Mr. Leonard serves as
8 Director of the Information Security Oversight Office (ISOO) within
9 NARA that was established by Executive Order to provide policy
10 oversight to the entire national classification system. Pursuant to
11 this authority, ISOO engages in outreach and information collection
12 activities from agencies within the Executive Branch that classify
13 information. Some of the information is also used to conducts audits
14 and, in turn, suggest follow-up recommendations for agency
15 classification systems.

16 b. Second, Mr. Leonard's testimony provides a formal
17 recounting of the official activities of his office, as opposed to
18 personal statements or beliefs. For example, the key assertion cited
19 by the Defense, that trained government classifiers only made
20 "clearly" correct classification decisions 64 percent of the time was
21 based on an official audit. "In an audit of agency classification
22 activity conducted by my office approximately one year ago, we
23 discovered that even trained classifiers, with ready access to the

1 latest access to the latest classification and declassification
2 guides, and trained in their use, got it right only 64 percent of the
3 time in making determinations as to the appropriateness of
4 classification." The fact that the testimony is published as an
5 official Congressional hearing record is immaterial, as it would be
6 independently admissible as an ISOO report or record under M.R.E.
7 803(8) (A) or (C).

8 8. All of the statements of subcommittee members and the
9 prepared statements and oral testimony of the testifying witnesses
10 except those of Mr. Leonard are hearsay and not admissible under
11 M.R.E. 803(8). See *Pearce v. The E.F. Hutton Group, Inc., et al*, 653
12 F. Supp. 810 812-815 D.D.C. 1987. The Court declines to take
13 judicial notice of the statements and testimony. Upon a showing of
14 relevance, the Court will take judicial notice of the existence of
15 Mr. Leonard's testimony in the Congressional record. The Court will
16 not take judicial notice of the substance of Mr. Leonard's testimony
17 as adjudicative facts.

18 Relevance: 2007 House Committee on Homeland Hearing
19 Transcripts:

20 1. The 2007 House Committee on Homeland Security Hearings
21 testimony was delivered and published in a Congressional record prior
22 to the date of communications in the specifications charging
23 violations of 18 U.S.C. Section 793(e) and 1030(a)(1).

2. With the exception of Mr. Leonard's 22 March 2007 statement and testimony noted below, the 2007 House Committee on Homeland Security Hearings are not relevant as substantive evidence of general over-classification on the merits or for sentencing. The Hearing is entitled "The Over-Classification and Pseudo-Classification Part I, II, and III." Almost all of the statements and oral testimony primarily address challenges in communications involving classified or pseudo-classified information among federal agencies and state and local law enforcement agencies. Pseudo-classification is not relevant to the charges at issue in this case, neither is communication involving classified and pseudo-classified information among federal, state, and local intelligence agencies. In addition, the hearings took place from March June 2007, almost three years prior to the charged communications at issue in this case.

Even if admissible on the merits or in sentencing as substantive evidence of general over-classification, the probative value of the 2007 House Committee on Homeland Security Hearings, with the exception of Mr. Leonard's statement and testimony, is substantially outweighed by the danger of confusion of the issues under M.R.E. 403.

3. Mr. Leonard's 22 March 2007 statement and testimony is admissible under M.R.E. 803(8) as a hearsay exception. Whether it is

relevant on the merits to cross-examine the OCA witnesses is not ripe for consideration. The Court defers ruling on this issue and relevance for sentencing until the issues are ripe at trial.

Ruling: Over-Classification Evidence:

The Government Motion to Exclude Over-Classification Evidence on the Merits and Sentencing is granted in part as set forth above.

1. Evidence of general over classification is not relevant as substantive evidence on the merits portion of the trial. Even if relevant, the probative value of evidence of general over-classification is substantially outweighed by the prejudice of confusing the issues under M.R.E. 403.

2. The Court defers ruling on whether Public Law 111-258 Reducing Over-Classification Act and the oral testimony and statement by Mr. Leonard is relevant for the limited purpose of cross-examining the OCAs under M.R.E. 608(c) and for sentencing until such time as the issues are ripe.

Judicial Notice:

The Defense motion to take judicial notice of Public Law 111-258, The Reducing Over-Classification Act and Congressional Hearings Discussing Classification is granted in part.

1. The Court will take judicial notice of the existence of Public Law 111-258, and the existence of the 22 March 2007 testimony

1 of Mr. William Leonard upon a showing of relevance as set forth
2 above. The Court will not take judicial notice of the truth of the
3 matter asserted as adjudicative facts.

4 2. The Court will not take judicial notice of the 16
5 December 2010 testimony of Mr. Thomas Blanton before the House
6 Judiciary Committee or the statements by subcommittee members and the
7 prepared statements and oral testimony of witnesses who testified
8 before the 2007 House Committee on Homeland Security Hearings on
9 Over-Classification and Pseudo-Classification other than Mr.
10 Leonard's 22 March 2007 statement and testimony.

11 So ordered this 31st day of January 2013.

12 Has this order been filed as an Appellate Exhibit?

13 TC[MAJ FEIN]: Yes, Your Honor. It has and it's been marked.
14 Your Honor, it's been marked as Appellate Exhibit 481.

15 MJ: All right. Does either side have anything further with
16 respect to over-classification?

17 TC[MAJ FEIN]: No, Your Honor.

18 CDC[MR. COOMBS]: No, Your Honor.

19 MJ: All right. Before we proceed then to our hearing on
20 closure, do the parties request a brief recess?

21 CDC[MR. COOMBS]: Yes, Your Honor.

22 MJ: How long would you like?

23 CDC[MR. COOMBS]: Ten minutes, Your Honor.

1 TC[MAJ FEIN]: That's fine, Your Honor.

2 MJ: All right. The court will be in recess and come back to
3 order in 10 minutes.

4 [The Article 39(a) session recessed at 1033, 27 February 2013.]

5 [The Article 39(a) session was called to order at 1046, 27 February
6 2013.]

7 MJ: This Article 39(a) session is called to order. Let the
8 record reflect all parties present when the Court last recessed are
9 again present in court.

10 Major Fein?

11 TC[MAJ FEIN]: Ma'am, if it's good with the Court, may the
12 government brief from the table instead of the podium?

13 MJ: Yes.

14 TC[MAJ FEIN]: Your Honor, now, we're moving into the
15 preliminary *Grunden* hearing for the United States -- for the evidence
16 the United States intends to elicit during the court-martial.
17 Essentially, first the law. The Sixth Amendment of the United States
18 Constitution guarantees the accused enjoy the right to a public
19 trial. This right is, of course, extended to the public's right to
20 attend the court-martial as memorialized by CMA, *U.S. v. Hershey*, 20
21 M.J. 433; however, Your Honor, this right to public trial is not an
22 absolute right, which is why we're here today under *U.S. v. Grunden*,
23 2 M.J. 116. Specifically it deals with classified information M.R.E.

1 505(j)(5) authorizes the closure of court-martial during presentation
2 of classified information, so the Court uses R.C.M. 806 for court
3 closure combined with *Grunden* and that case law to determine when
4 it's appropriate to close the courtroom for classified evidence
5 presentation. 806 governs and has its four part test, which has
6 already been discussed throughout this pretrial litigation.

7 Ultimately, Your Honor, for the facts in this case and why
8 we're here today under the government's *Grunden* filing, the United
9 States Government Witness List Number 4, dated 31 January, contains
10 141 witnesses for merits and sentencing. Of those 141 witnesses, the
11 United States listed 73 witnesses that the United States intends or
12 will likely elicit some form of classified information from. Out of
13 141, the United States identified for the defense and the Court 73
14 witnesses that there will be some form of classified information
15 elicited from. That's in many different forms including alternative
16 such as redactions, electronic displays and silent witness rule,
17 hybrid of silent witness rule, physical screens or disguises,
18 substitutions, code words, names on syllabus or legend. In fact,
19 that's already memorialized in the case calendar as a due date for
20 the government on 22 April, declassification and oral testimony in a
21 closed session.

22 The reason we're here today, Your Honor, is really to focus
23 on those individuals out of the 73 witnesses that the government

1 contends the portions of their testimony, not necessarily all of
2 their testimony, we'll get to how that breaks down, but those
3 witnesses that an alternative is not adequate for. So out of 141, 73
4 the government intends to elicit classified information in some form.
5 Of those 73 witnesses, the United States isolated 37 witnesses in
6 this filing for whom specific areas of their testimony concerning
7 classified information can have no meaningful effect or helpful
8 alternative to courtroom closure.

9 So 141 whittled down to 73; 73 out of those, there's 73
10 that some portion of their testimony, not even all of their
11 classified testimony, Your Honor, only those portions the government
12 has outlined in its filing would -- the United States argues would
13 require courtroom closure.

14 MJ: Let me ask you ask you a question, Major Fein.

15 TC[MAJ FEIN]: Yes, ma'am.

16 MJ: Of those 37 witnesses -- I mean, are they categorical? Is
17 it like some of them are OCA witnesses, other ones are impact
18 witnesses?

19 TC[MAJ FEIN]: Difficult question to answer, ma'am, because
20 *Grunden* says you can't do this by category, but there some
21 commonalities among many of the witnesses. A good example is there
22 are some charged documents that are charge sheet, even written on the
23 charge sheet, that the United States government has not publicly

1 acknowledged or ever compromised, because they remain -- they were
2 classified at the time and remain classified today. Any witness that
3 is testifying to those charged documents either from the organization
4 that owns the documents or even to the forensic examiners of the
5 United States Army CID that's going to testify about the forensic
6 behind those documents, yes, those portions of testimony for those
7 witnesses is what's on -- reflected on this and is part of the 37.
8 But -- so -- but for different reasons, and that's why categorically
9 I don't think it's a good way to address it, Your Honor, because the
10 organization that remains classified, the individuals -- there's
11 three of them. Those three individuals, the United States argues
12 their entire testimony must be elicited in a closed session. Is the
13 mere fact that if they were to say who they are, although they
14 themselves are not operating in a classified -- their names are not
15 classified, but if they were to state who they are and who they work
16 for that would publicly acknowledge classified information, thus
17 disclose classified information, which is the interest the government
18 is trying to protect.

19 MJ: All right. Those three witnesses aside, the other 34
20 witnesses?

21 TC[MAJ FEIN]: Yes, ma'am.

22 MJ: The defense has proposed two alternatives. Why would those
23 be unworkable with those witnesses?

1 TC[MAJ FEIN]: Ma'am, first the defense's alternatives are very
2 workable for the entire aggregate of all the witnesses of the 73 --
3 excuse me, 74. For those specific remaining 33, one of them, Your
4 Honor, is John Doe, which is the United States' witness ----

5 MJ: I'm not -- I don't want to talk about unique witnesses.
6 Let's talk about the ----

7 TC[MAJ FEIN]: Yes, ma'am. I'm whittling down that number,
8 ma'am. You said three, so it's really four if you add John Doe to
9 mix.

10 MJ: Okay. All right.

11 TC[MAJ FEIN]: So out of the 37, there are four witnesses that
12 are somewhat very unique. Then that remaining number is 33. Out of
13 those 33, the alternatives the defense has offered that the United
14 States is contemplating isn't adequate because -- mostly because of
15 the confusion in the courtroom.

16 The simplest example will be a CID agent. The forensic
17 examiner -- Special Agent Shaver is the forensic examiner, he's
18 listed on the *Grunden* filing. The United States intends to call
19 Special Agent Shaver probably, unfortunately for almost a week worth
20 of testimony in this case, because he's the main forensic examiner
21 linking 8 terabytes of information, the majority of which was
22 classified. Almost all of his testimony -- in fact, this is what
23 happened at the Article 32 here in this same courtroom. About 98

1 percent of his testimony was unclassified or was referencing forensic
2 reports, which would be a silent witness rule or would be a syllabus
3 or a code word. He was able to do that. When it got to the very
4 specific portion that would be too confusing, too technical, if you
5 look at this file name, associated with this file, with this
6 organization -- this file, this organization and you start combining
7 that all, no reasonable person, Your Honor, would be able to continue
8 to follow that without him just being able to say, show it and then
9 move on. It's only for that limited portion. Then we would open the
10 courtroom after cross-examination at that point and then continue on
11 with the testimony of Special Agent Shaver.

12 MJ: All right.

13 TC[MAJ FEIN]: That's one example. The other, Your Honor, of
14 the remaining 33 witnesses, many of them are sentencing witnesses,
15 Your Honor. The sentencing witnesses are going to testify about
16 actual damage today that's classified. Although some of them could
17 talk about -- in code word, country X, issue Y, issue 5 country X.
18 It would become as the United States, I could not come up with this
19 on my own, Your Honor, this hypothetical. In the government's motion
20 -- page 4 of the government's motion, this is literally what for
21 these witnesses their testimony would sound like, something to the
22 effect of:

1 "This document, which describes this issue, which describes
2 Country A, providing information 24 to Country Q, relates to the
3 national defense" -- well, if it's for sentencing, "harms the United
4 States for reason 89 or reason 412." They would have to literally be
5 going through a syllabus and figuring that out, including cross-
6 examination. Defense fully trying to cross the sentencing witnesses
7 to explore whether there is potential bias, to explore the factual
8 basis as expert testimony. We would be spending more time in court
9 going through a treatise at this point, not just a legend or
10 syllabus, of them trying to find which of the reasons to answer.
11 Again, this is a case-by-case, witness-by-witness, issue-by-issue.

12 The last -- if you want to -- we can call it a category,
13 Your Honor, is for the merits. The witnesses on the witness list
14 that represent the only organizations -- I'll use State Department
15 again, a certain government witness that will be testifying about the
16 actual compromised classified cables and why they are classified,
17 that witness has most of them on average between 3 and 11 different
18 State Department cables. They're listed in our filing. I'll point
19 the court to the exact one. Your Honor, page 30 of the *Grunden*
20 filing, number 30 -- witness number 30. Ambassador Seche, from the
21 Department of State, we have it listed there, will testify about the
22 contents, the classified contents of these cables, all of these
23 cables to explain to why they are foreign government information, why

1 they would have to be the type of information that's protected for
2 the purposes of national security. That explanation can only be done
3 in oral testimony, Your Honor, to allow the Court to ask questions or
4 the trier of fact, whoever that is that that time, allow defense to
5 properly cross-examination. It isn't simple testimony that would
6 require, for instance, a redaction or another type of alternative to
7 where -- to prove possibly that the accused had reason to believe
8 that information was being protected for the purpose of national
9 security.

10 A document that is marked at the top and bottom, the
11 government could technically redact the entire contents of the
12 document, that would make it classified, and just show a marking that
13 says, "Secret" across the top and bottom. Yes, that is an
14 appropriate alternative, that is what the government intends to do
15 with all of the other witnesses, but these 33 remaining witnesses,
16 their testimony is so -- I guess, is so comingled with the classified
17 information it wouldn't make sense to the trier of fact or the
18 parties to be able to have a viable alternative or any alternative,
19 excuse me.

20 MJ: How many of the 33 witness are merits and how many are
21 testimony?

22 TC[MAJ FEIN]: Say again, ma'am?

1 MJ: How many are witnesses on merits and how many are --
2 sentence, I'm sorry, sentencing witnesses?

3 TC[MAJ FEIN]: May we have a moment, Your Honor?

4 MJ: Yes.

5 TC[MAJ FEIN]: May I continue, Your Honor, while co-counsel
6 figures out that number?

7 MJ: Yes.

8 TC[MAJ FEIN]: Because some of them will be both as well.

9 Your Honor, under *Grunden* the Court is constitutionally
10 required to use this scalpel an ax when closing the courtroom for the
11 classified testimony. *Grunden* is a great case, Your Honor, other
12 than its case we have to go off of for this, but the facts of that
13 case are very appropriate here as well.

14 The Court -- The United States in *Grunden* sought for a
15 blanket exclusion of the public for the entire contested portion of
16 *Grunden*. There was a total of nine witnesses the government called.
17 One of those witnesses discussed classified matters at length. One
18 other witness only had ten references of classified, three of the
19 nine witnesses only had one reference and four made no reference to
20 classified information. Your Honor, that is not what the government
21 is proposing. In fact, the government has gone through and outlined
22 exactly where the scalpel be drawn for each of these witnesses.

1 This is, of course, is in addition to what to do April 22,
2 which is the syllabi and legends for all the other witnesses the
3 government intends to elicit, including some of these, like I
4 mentioned, Special Agent Shaver a good example. You will have an
5 extensive legend.

6 Your Honor, in footnote 20 of *Grunden*, the Court of
7 Military Appeals highlights that trial courts "need not participate
8 in so rigid of a procedure as to turn your courtroom," Your Honor,
9 "into a parade," having witnesses have to necessarily reference left
10 and right different documents, different times. Continuity of
11 testimony and a fact that a given witness's testimony deals virtually
12 exclusively of classified material or certain factors which could
13 lead to the exclusion of the public from all that given witness's
14 testimony, regardless of the fact that a portion was not concerned
15 with such matters. Even the court in *Grunden* recognized that for
16 certain witnesses exclusion could be appropriate. That's only, Your
17 Honor, for four of the entire -- four of all the witnesses.

18 MJ: *Grunden* was decided back in the 70's. Is the government's
19 position that *Grunden* reflects the current state of the constitution
20 -- constitution law with respect to First and Sixth Amendment closure
21 issues?

22 TC[MAJ FEIN]: For purposes -- for -- Yes, Your Honor, for
23 purposes of protecting classified information. Denver Post one of

1 the most recent cases from ACCA, even uses *Grunden* as -- although we
2 didn't brief Denver Post, Your Honor, because really it focused on
3 applying *Grunden* to an Article 32, but Denver Post said *Grunden* even
4 applies to Article 32s. It is the most recent case law that we have
5 available that would say *Grunden* still does apply. And M.R.E.
6 505(j), Your Honor, although it doesn't use the scalpel language, of
7 course, in *Grunden*.

8 MJ: Does the government agree that M.R.E. 505(i) that closure
9 provision must be read in light of the First Amendment, the Sixth
10 Amendment and R.C.M. 806?

11 TC[MAJ FEIN]: The first two, absolutely, ma'am. It has a
12 direct role with 806, 806 references 505(j) and references 505(i) for
13 an in camera proceeding. I think the two have to be read together
14 according to 806.

15 MJ: Now, with these witnesses, what's the government's
16 anticipation of how much of this trial on the merits is going to be
17 closed?

18 TC[MAJ FEIN]: Very little, Your Honor.

19 MJ: What does that mean?

20 TC[MAJ FEIN]: Your Honor, as going through the government's
21 *Grunden* filing -- Your Honor, first to take merits and sentencing.
22 The merits portion the government would estimate probably no more
23 than 30 percent. It would only be the portions that talk about ----

1 MJ: The government considers 30 percent very little?

2 TC[MAJ FEIN]: Well, Your Honor, the reason -- the reason the
3 government considered 30 percent very little is because we're talking
4 about the volume of classified information that's charged in this
5 case warrants this. The defense, as brought out in this Court
6 yesterday, is contesting whether this information is in fact national
7 defense information for the military. Well, the government then has
8 the burden -- always has the burden regardless of the offense's plea,
9 to prove this information is national defense information. Well, the
10 information was classified at the time. We have a classification
11 review from an OCA that says it is classified today. The government
12 has the burden and shouldn't not be required or have the opportunity
13 to put a witness on the stand and explain exactly why it's national
14 defense information.

15 MJ: Well, I guess that's where I'm confused here. We've got --
16 you've got OCAs coming in. That's why I asked you about categorical
17 witnesses.

18 TC[MAJ FEIN]: Yes, ma'am.

19 MJ: All of the OCAs are going to fall in those category, is
20 that right?

21 TC[MAJ FEIN]: Yes, ma'am.

22 MJ: And all of them have prepared already, classification
23 reviews, right?

1 TC[MAJ FEIN]: Yes, ma'am.

2 MJ: So I guess where I'm going with this is why can't an
3 alternative work where I have the classification review or the
4 members have a classification review, the parties have the
5 classification review and the OCA has the classification review?

6 TC[MAJ FEIN]: Well, ma'am, that can work for the majority of
7 their testimony, and that is what the government is saying that it
8 intends to do through a legend, syllabus in that scenario a
9 classification review. But the why isn't ever captured in there.
10 The classification review in this case ----

11 MJ: Well, the why has to be in the classification review,
12 right?

13 TC[MAJ FEIN]: Well, yes, ma'am. The generic language is
14 because they are unclassified. The majority of all the
15 classification reviews are unclassified. They say something to the
16 effect of this is properly classified under the Executive Order
17 paragraph 1.4b, military plans, or it's properly classified for this
18 reason according to our classification guide. I have reviewed the
19 document. It doesn't necessarily explain why. It doesn't
20 necessarily explain or allow, for instance, the defense to cross-
21 examine an OCA as the defense has said throughout this proceeding
22 that they intend to cross-examine the OCA on exactly why this
23 information is classified, but not this information, why their

1 decision for this was made. Well, that testimony, Your Honor, on the
2 why that can't necessarily can't be memorialized in a document.

3 MJ: The government's case in chief, can that be in open court
4 using the classification review? Cross-examination is a separate
5 issue.

6 TC[MAJ FEIN]: No, ma'am. Because for the same reason I just
7 said. That was just an example, Your Honor. There is no question
8 that the ultimate opinion of the OCA, the biographical information of
9 the OCA and the process leading up to the OCA's decision and all of
10 that will be in open court. The OCA, a good example would be Vice
11 Admiral Harward, the Deputy Commander of the United States Central
12 Command, that is on our witness list will be testifying why he
13 believes under his authority that the CENTCOM derived -- originated
14 information is classified. He will testify to all that in open
15 court.

16 The why it was -- why is that these documents -- no, Your
17 Honor, that is something that would need to be done in a closed
18 session, but only the portion that says the why, not his opinion --
19 his ultimate opinion, not what leads up. It's only what leads up to
20 the why portion. The rest will be in open session for the merits.

21 Another example, Your Honor, using CENTCOM is that the OCA
22 himself is only testifying about why it was properly classified, or
23 why they made the decision or today it is -- was classified. They're

1 also subject matter experts or other individuals that will testify
2 about the facts contained within the documents, the classified facts,
3 to explained why, as I mentioned before, foreign government
4 information. Why is it national defense information? Why is it a
5 military plan? Why is it intelligence sources and methods? That's
6 the burden the government has to prove to the trier of fact.

7 MJ: So I guess that's where I'm getting confused. Why can't I
8 have the document that they're talking about -- Just for sake of
9 argument here, let's assume I'm the trier of fact.

10 TC[MAJ FEIN]: Yes, ma'am.

11 MJ: Why can't I have the document that they're talking about,
12 the parties have the document they're talking about, the witness has
13 the document they're talking about, and the witness just explains
14 generically without specific reference to the particulars of the
15 document why it's -- why the witness believed it had reason to cause
16 damage to the United States?

17 TC[MAJ FEIN]: Ma'am, the United States does believe that can
18 happen and intends to do that, but the United States also contends
19 that that's not sufficient, that alone. That will be in the open
20 portion of the session. The United States contends that to get over
21 the burden of beyond a reasonable doubt and to properly plan a case
22 that incorporates in a potential cross-examination we have to go into
23 more detail. The government shouldn't have its hands tied, for

1 instance, to not be able to ask detailed questions of the witnesses,
2 to have them explain why exactly that information -- why is it IED
3 information that's contained in some type of report could harm
4 national security? What are the particulars of that IED information
5 that's contained in that report?

6 What I just said right now in an open session right now,
7 he'll be able to talk about that in generality, but in order to
8 overcome the burden of beyond a reasonable doubt, they really need to
9 be able to get into those details. From their experience and their
10 knowledge, why is it that type of information contained in the
11 classified document, is the type that warrants protection?

12 The defense's own argument so far up to this point in
13 different litigation has been that this information is known to the
14 public, this information is -- that's what they intend to argue, at
15 least so far. The government shouldn't, again, have its hands tied
16 to not be able to go down that line of questioning with the witness
17 and allow the trier of fact to do it as well, if you for the sake of
18 this argument have questions of the witness.

19 MJ: In the *Diaz*, the *Diaz* case had testimony with respect to
20 reason to believe could cause damage. Is the government aware of
21 whether that was in a closed session or not?

22 TC[MAJ FEIN]: No, Your Honor, but we can find out.

1 MJ: Please do that. Is the government aware of any other
2 federal or military case that has involved closed sessions for
3 classified information?

4 TC[MAJ FEIN]: Yes, ma'am. The government knows that in *U.S. v.*
5 *Steele* there was a closed session in Iraq. There are others, Your
6 Honor. There was a closed session in maybe *U.S. v. Martin*.

7 MJ: The Court ----

8 TC[MAJ FEIN]: In sentencing.

9 MJ: The Court would like, if you would, for the government to
10 document those cases ----

11 TC[MAJ FEIN]: Yes, ma'am.

12 MJ: ---- and alert the Court of what they are, federal cases as
13 well, if you are aware of them.

14 TC[MAJ FEIN]: Yes, ma'am. Ma'am, we've talked about merits.
15 The second half would be sentencing. I think I have the numbers for
16 you as well. Ma'am, there are 21 witnesses out of the 33 remaining
17 for merits, there are 14 for sentencing and there are 2 that overlap.

18 MJ: Of the 21, how many are OCAs?

19 TC[MAJ FEIN]: OCAs themselves or OCAs or their reps that will
20 be testifying about the specifics of documents because it's too --
21 the government intends to call subject matter experts, lower-level,
22 more detailed testimony about the documents and then ultimately call
23 an OCA. I assume you mean really both categories?

1 MJ: Yes.

2 TC[MAJ FEIN]: We'll get that number to you as well, ma'am.

3 So for sentencing, Your Honor, the government does intend,
4 of course, to apply the scalpel, has already in its filing said, you
5 know, these witnesses are going to be able to testify about all of
6 the unclassified damage within the scope of their -- of why the
7 government's calling them, but at some point their testimony will not
8 be able -- at least will not be of the type that will be meaningful
9 for the Court to be able to reference other country, acts, issue, why
10 as a hypothetical product before it.

11 There is a lot of damage, yes, that's unclassified, but the
12 sheer nature of the testimony will -- warrants this to be in a closed
13 session. They're talking about the actual damage caused to the
14 United States. The government already -- by not being able to
15 provide the Court this information, then the United States argues
16 that's again tying the government's hands in its aggravation case.
17 Without explaining certain countries, relationships with certain
18 countries, the enemies of the United States and their capabilities,
19 how their capabilities have been increased, which causes more damage
20 to the United States, injury or death to individuals, that type of
21 testimony, Your Honor, cannot be done in a public session. Syllabus
22 and legends are appropriate for some of the information, but the

1 United States is saying for certain portions of these individual's
2 testimony, it doesn't work.

3 MJ: The Executive Order on classification allows
4 declassification if it's in the public interest. Has the government
5 gone to any of these agencies or entities and asked that any of this
6 classified information at issue be declassified?

7 TC[MAJ FEIN]: Yes, Your Honor. The United States is in
8 constant discussion with all organizations, entities, for every
9 witness and every piece of evidence to have that. The United States
10 will say today that although this filing was on 1 February, we'll
11 continue until the day this sentencing -- assuming there is finding
12 of guilt and a sentencing portion, until the day sentencing is over,
13 is going to try to declassify information. I mean, it behooves all
14 parties to have this information declassified. As of today, it does
15 not appear that any of information is going to be approved to be
16 declassified. It's an ongoing process.

17 The environment in the world and the United States
18 Government does change, that warrants declassification at different
19 times. Even in this case, certain information that the government
20 was told will never be declassified was because of different factors
21 occurring in the world. Or information that the United States has
22 been told that these prosecutors would never -- would be declassified
23 then wasn't. A good example is the government is working with the

1 Department of State to have certain witnesses of theirs and see if
2 their testimony can change to just make it declassified. That is an
3 ongoing process, but as of the snapshot in time, 1 February, the
4 United States doesn't anticipate any of these people as of that date
5 and today will have unclassified testimony in those areas.

6 So, Your Honor, ----

7 MJ: So what ruling is the government seeking from the Court?

8 TC[MAJ FEIN]: Your Honor, the purpose -- ultimately the purpose
9 today is to -- I guess it's really to create a roadmap going forward,
10 having specific findings made for certain individuals on certain
11 topics, witness-by-witness, issue-by-issue, so when the time comes
12 and this witness is called that the findings have already been made,
13 so really what this is -- the purpose of this is for judicial
14 economy.

15 MJ: How can I make a finding, for example -- let's just look at
16 witness number 2 here, Colonel Julian Chesnutt.

17 TC[MAJ FEIN]: Yes, ma'am.

18 MJ: Defense Intelligence Agency. You want me to make
19 classified findings basically on the classified information that this
20 witness -- that's basically blacked out of the redacted portion?

21 TC[MAJ FEIN]: Yes, ma'am. The United States in the filing gave
22 an unclassified version so if the Court was to -- to -- to agree for
23 this -- is really just a procedural issue right now that Colonel

1 Chesnutt would testify to the classified information there based off
2 the government's proffer and if he was, that it would be in a closed
3 session. The unclassified finding for the Court -- for the public
4 would be that this portion of Colonel Chesnutt's testimony related to
5 the interest of national security addressed in EO 13526, section 1.4
6 A, C and D. There's the unclassified portion for a public finding
7 and then the classified finding would be based off of what is
8 redacted in this filing.

9 Even the Court's order would then -- would limit the scope
10 as required under 806 and *Grunden* and the language has essentially
11 been provided by the government for the order, but it would only be
12 to the point of the information discussed above and no more, no less.

13 MJ: So if I'm understanding the government, there are four
14 witnesses whose testimony the government is asking the Court to have
15 completely closed?

16 TC[MAJ FEIN]: Yes, ma'am.

17 MJ: And not identified, at least in the unclassified portion of
18 the record?

19 TC[MAJ FEIN]: Yes, ma'am.

20 MJ: Now, all of the rest of the witnesses are going to at least
21 be identified on the record and have some open testimony?

22 TC[MAJ FEIN]: Yes, ma'am. The United States anticipates --
23 just like -- I know that the Court doesn't have the benefit of being

1 a fly on the wall to the Article 32, but call a witness -- The United
2 States calls -- as you mentioned before, Colonel Chesnutt to the
3 stand. You go through the normal background information, go right
4 into the direct, elicit the testimony, and then once it gets to the
5 portion that would be absolutely the only way to disclose it or any
6 disclosure of that information following would be classified then you
7 give the defense an opportunity to cross-examine if they chose. At
8 that point -- if not, then move into the actually classified setting.
9 By this procedural -- what we're working out right now procedurally,
10 that then would allow the Court to simply say, "Based off my prior
11 findings, we're now at that portion," and reference -- not have to
12 actually go through a mini *Grunden* hearing for it, just reference
13 that, close the courtroom, implement the procedures for closure,
14 which hopefully would be about no less -- no more than 10 minutes --
15 10 to 15 minutes. The public is removed, the feeds are cut, the
16 proper security measures are taken within the building and outside
17 the building, and then Colonel Chesnutt may not even have to leave
18 the stand, maybe go to the restroom on a quick recess, come back and
19 then we continue with the testimony. Once the classified portion is
20 complete, defense cross-examination complete, then we open the
21 courtroom, bring everyone in and continue moving on.

22 MJ: Okay.

1 TC[MAJ FEIN]: Ma'am, to answer your previous question, no
2 including the four more special witnesses, there are three actual
3 OCAs and there are 12 witnesses identified as, I guess, subject
4 matter experts or others that would testify in conjunction with the
5 OCA testimony.

6 MJ: And that's for the merits?

7 TC[MAJ FEIN]: Yes, ma'am. That's for the merits.

8 MJ: All right. I've asked you all for a due out on those
9 cases. What's a reasonable time in the government's estimation to
10 have that information to the Court?

11 TC[MAJ FEIN]: May I have a moment, Your Honor?

12 MJ: Yes. I don't need it tomorrow. I mean, just give
13 yourselves whatever time. I would rather have the thoroughly
14 researched with more cases than faster.

15 TC[MAJ FEIN]: Ma'am, we think we can probably get it to you
16 before next Friday, but probably next Friday, that way we can
17 actually reach out to the other branches and get whatever records of
18 trial, the relevant portions.

19 MJ: Well, we've already got the filing dates for the next
20 session. Would those dates work?

21 TC[MAJ FEIN]: Yes, ma'am.

22 MJ: Okay.

23 TC[MAJ FEIN]: That's at least 2 weeks.

1 MJ: And Defense, the same thing for you. If you find these
2 issues addressed in any cases that you're aware of -- I'm just trying
3 to get a sense of what's -- what cases have addressed this issue
4 before just to get a flavor of how much trials have been closed for
5 classified information.

6 CDC[MR. COOMBS]: Yes, Your Honor.

7 TC[MAJ FEIN]: Yes, ma'am. We'll also look at the federal
8 courts as well, Your Honor.

9 MJ: Okay. So we can plug that maybe into the court calendar
10 too. Just use the filing deadlines that in the next ----

11 TC[MAJ FEIN]: Yes, ma'am.

12 MJ: Anything else from the government on this issue?

13 TC[MAJ FEIN]: May I have a moment, Your Honor?

14 MJ: Yes.

15 [Pause.]

16 TC[MAJ FEIN]: Ma'am, there is I guess one -- just one other --
17 I just want to notice to the parties and to the Court. There is no
18 question in our filings and what's clear already is that both parties
19 are working together for stipulations. We already have one for the
20 Fort Leavenworth witness. That is probably the easiest and most
21 viable option, but both parties have to agree and recognize that that
22 we might not agree and the defense might not agree, that's why it's a
23 stipulation.

1 Secondly, there is no question that based off of the
2 defense's -- excuse me, the accused's plea, this could change as
3 well. This is only -- it is preliminary for planning -- the purpose
4 of this is, again, for judicial economy so we're not stuck doing this
5 at the eve of trial or during the trial. Based off the plea as it
6 stands now, if the accused is found provident, the United States is
7 confident that many of the witnesses on the merits will probably not
8 even be called assuming that there's no change in the plea throughout
9 the proceedings. That should not change the -- it might change how
10 long the trial will be and how many court closures might occur or not
11 occur, that would change at least our filing in the future.

12 MJ: So the filing that I currently have before me is assuming
13 it's a full blown -- a full blown presentation by the government on
14 the case on the merits?

15 TC[MAJ FEIN]: That's the assumption the government makes.

16 MJ: So this is the maximum potential closure that would occur
17 in the case?

18 TC[MAJ FEIN]: Yes, ma'am. Yes, ma'am. Thank you, Your Honor.

19 MJ: Defense?

20 ADC[CPT TOOMAN]: Your Honor, it's the defense's position that
21 the government's request lacks the specificity that the Court would
22 require in order to make an informed decision. When looking at rule
23 806, the Court's required to put on the record why a particular

1 decision was made. The government talked a lot about the why that
2 witness will be testifying to, and it's the defense's position that
3 the Court needs to know the why that a witness would be testifying
4 about before the Court makes a decision on whether or not a
5 particular remedy or alternative works.

6 MJ: Well, aren't I given a why in the classified portion?

7 ADC[CPT TOOMAN]: The defense's position is you're not given
8 the why, Your Honor. You're given a generic kind of, you know, big
9 picture look and you're not given the why. You're not given what
10 this particular witness is going to say and how you can't compare
11 that to the potential work arounds. It's the defense's position that
12 you need that in order to actually analyze whether or not an
13 alternative is going to be sufficient.

14 MJ: So is it the defense's position I need to wait for trial on
15 this issue?

16 ADC[CPT TOOMAN]: No, the defense's position is that we could
17 do a closed 39(a) where we consider witness-by-witness what the
18 testimony of a particular witness from a proffer from the government
19 what a particular witness would say with respect to particular
20 classified information and then we could talk about what the
21 alternatives are.

22 MJ: Are the parties prepared to do such a closed session
23 without a live witness, just talking -- the government makes a

1 proffer of what witness X is going to say? I mean, is there any
2 disagreement over what the witness is going to say?

3 ADC[CPT TOOMAN]: Well, we've spoken to the witnesses. We
4 know what the witnesses have told us. We know what the whys are that
5 they've given us. From our perspective, based on those interviews,
6 we think those whys could be discussed using the alternatives
7 proposed by the government -- or by the defense. It's our position
8 that that why itself isn't classified. It's that why connected to
9 the piece of classified information. If the Court has, you know,
10 this classified document and the witness says, "Okay, I'm now talking
11 about Paragraph 1, that was properly classified because a, b, c or
12 that relates to the national defense because of a, b or c." That's
13 totally fine because that why isn't associated with anything in
14 particular. It's not associated with a specific cable or even for
15 the purposes of those viewing the proceeding, it wouldn't be
16 associated with even a particular subparagraph of a cable. The issue
17 about classification wouldn't be an issue.

18 MJ: Say for example you have -- and I'm just throwing something
19 out there, I have no idea. I'm going back to, I guess, the
20 hypothetical that the government had suggested. A particular unit
21 suffers some actual damage from a particular -- the release of
22 particular information, how would the witness say that in open court

1 without allowing people who put together dots to put together the
2 dots and figure out what they're talking about?

3 ADC[CPT TOOMAN]: Sure. Well, I think one way would be to not
4 have that particular witness identify themselves with particular unit
5 or even say that this affected a particular unit in open court. That
6 could be done through a syllabus that the government talked about.
7 Again, they could say -- they could be looking at SIGACT 14 and say,
8 "The effect of this," without referencing SIGACT 14 or we all know
9 what SIGACT 14 is and we all look at it, and the witness says, "The
10 effect of this was we had a Soldier killed or we had a Soldier
11 injured in this way."

12 From our perspective, the fact that a Soldier is killed or
13 injured is not classified. We put those on DoD.gov everyday,
14 unfortunately. That is ----

15 MJ: But how they are injured or killed could potentially be
16 classified, right?

17 ADC[CPT TOOMAN]: Well, potentially, but again, I would point
18 to DoD.gov and the news releases. They'll say, "Soldier X was killed
19 with an IED blast in X province of Afghanistan." For a witness to
20 come up here and say that a Soldier was killed because of an IED
21 blast in this particular province of this country is not classified
22 from our perspective. Those are things that are published routinely.
23 But the association with that -- with a particular piece of

1 classified information might be classified, but from our perspective,
2 those two things can be separated.

3 MJ: Well, then the person could testify that it resulted in a
4 death, but if the released information was, for example, gave
5 information on allowing another entity to figure -- to put that IED
6 there, for example -- I don't know your facts.

7 ADC[CPT TOOMAN]: Sure.

8 MJ: For example, wouldn't -- how would that be able to be
9 testified about in open court?

10 ADC[CPT TOOMAN]: Well, we think -- ma'am, the government just
11 gave examples in open court of particular damages and I think a
12 witness could say, you know, "Looking at this cable gave the enemy to
13 adjust their TTPs and as a result of that adjustment they placed an
14 IED here. The result was this casualty or this death." From our
15 perspective that's not -- that wouldn't be classified. I think this
16 point that you're making, Your Honor, goes to our point of, the Court
17 needs to know with some specificity what these witnesses are going to
18 testify before we can determine whether an alternative is possible.
19 We can't -- based on them saying, "Well, they're going to testify
20 about whether or not it's related to the national defense." Okay.
21 That -- you know, we need to know, what is the testimony and how does
22 it relate to these alternatives that we've come up with or could come

1 up with if we knew with some more specificity what it is. It's our
2 opinion that the rule would require that.

3 MJ: The defense referenced in your motion the possibility of
4 having, for example, a witness adopt a statement that's already been
5 written out. Now, that would be subject to a hearsay exception. Is
6 the defense saying -- if I approve this whole procedure and we get up
7 here and I say I've got this witness, objection, hearsay.

8 ADC[CPT TOOMAN]: Certainly, Your Honor, that point is well
9 taken, but I think that would be something that the parties would
10 work on where if there is some sort of nuance or, as the government
11 refers to it in their motion, that we can't get around, that would be
12 one way we could get around it is working together, which we've said
13 we're willing to do on stipulations and in our minds this would be
14 similar to a stipulation, this is what the witness would answer to
15 that question. They can put all the specificity in there that they
16 need to, all the nuance they need to and if we agree to it, then the
17 witness could then adopt it and say, "Yeah, this is what I -- that's
18 what I would say. In relation to that question, that's what I would
19 say."

20 MJ: Well, I guess where I'm -- when do the parties envision
21 having all of this, I guess, hashed out? Have you finished your
22 interviews yet with the various witnesses?

1 ADC[CPT TOOMAN]: There are I think maybe one Department of
2 State witness and then, of course, John Doe is up in the air and that
3 will be hashed out. Other than that, I believe that we've spoken to
4 the witnesses that are on -- that we -- in this motion.

5 We have -- we have an idea of what these witnesses have
6 told us. With respect to that, Your Honor, the why that we get from
7 these witnesses is often the same, you know, it's -- if it's
8 Ambassador whoever talking about cable whatever, they're giving the
9 same reason over and over and over again.

10 MJ: Is this something that the parties will be able to
11 negotiate and have some way ahead at the next Article 39(a) session?

12 ADC[CPT TOOMAN]: One moment, Your Honor.

13 [Pause.]

14 ADC[CPT TOOMAN]: Your Honor, I think -- I mean, we would be
15 prepared to do that this week; otherwise, we could work with the
16 government before the next session.

17 MJ: Well, and -- because the government has the legends and all
18 that due the next session. What I want to do here is I want to get a
19 roadmap for the parties so the first day of trial you have some
20 clarity on how we're going to proceed. The parties have said you
21 really don't have that much at issue with what these witnesses are
22 going to say, but you'll figure that out when you actually sit down
23 and discuss that.

1 ADC[CPT TOOMAN]: Sure. Yes, ma'am.

2 MJ: So you're either going to agree or you're not going to
3 agree. The Court probably needs to know that in order to make an
4 intelligent decision with respect to closure. Are the dates of the
5 next Article 39(a) session -- is that enough time before trial and
6 from until then to get together and decide whose testimony you can
7 agree on and whose testimony you can't agree on?

8 ADC[CPT TOOMAN]: By my recollection I think the next 39(a) is
9 in April.

10 MJ: 10 April, I think it's 10 April.

11 TC[MAJ FEIN]: Ma'am, I mean hypothetically absolutely. I mean,
12 as long as the parties are agreeing, but I mean the government has to
13 agree. It's a negotiation process. Both parties could agree, could
14 not agree. I mean, I don't foresee there much agreement on
15 sentencing, probably much more agreement on merits. I'm not point to
16 the defense. I'm just saying from both sides.

17 MJ: What I'm asking -- I'm not asking you to -- I'm asking you
18 to try to come to an agreement with what people will say by the next
19 session and let me know whether you can or can't or how much -- to
20 what percentage you can. That may make a difference in how we proceed
21 with the closure and what adequate alternatives might be available or
22 not available depending on what you all come to an agreement on or
23 not.

1 ADC[CPT TOOMAN]: Sure. Your Honor, I think we did that with
2 the Fort Leavenworth witness. I think we could probably do it with
3 these other witnesses. We compare what we've been told they're going
4 to say and work towards it.

5 MJ: Government?

6 TC[MAJ FEIN]: Ma'am, we'd have to do it by next session,
7 because also on the calendar then is the defense's *Grunden* notice and
8 then we're going to be right back to where we're at, without pushing
9 anymore dates to the right. Yes.

10 MJ: I'm not interested in pushing dates to the right. I just
11 want to make sure that we have some clarity to go forward with.
12 Again, I've got a scalpel and I view that scalpel duty very
13 seriously. To the extent there are alternatives to closure I want to
14 consider them.

15 I also wanted to propose one thing to the parties. Would
16 it be at all helpful to have a witness, one of the -- it doesn't have
17 to be a high -- an OCA or of that level, but would it be helpful to
18 have one of the witnesses whose testimony would potentially fall in
19 within these 33 to come in at the next Article 39(a) session and sort
20 of do a dry run? If we tried these alternatives, what would it look
21 like? If we closed the Court, this is the type of information we
22 would elicit from the witness. To make it more ----

1 TC[MAJ FEIN]: Ma'am, it might be better -- ma'am it could be
2 better to possibly not -- the United States isn't committing to this,
3 ma'am, but it might be better to actually have a verbatim transcript
4 made of a portion of the Article 32 that this has already happened at
5 that way all the parties can read it, see it and see exactly what did
6 or did not happen. Like I said before, this did happen with the
7 Article 32.

8 MJ: Did the Article 32 consider any alternatives?

9 TC[MAJ FEIN]: Yes, ma'am. And alternatives were used.

10 CDC[MR. COOMBS]: Ma'am, for the Article 32, though, that was
11 forensic testimony that was being testified to as to how certain
12 things were found. It wasn't this issue that the government
13 currently now is saying they cannot find an alternative to the why
14 aspect. I think the dry run through would be a prime example of how
15 we could show how an alternative would work. The way it should
16 happen is that we know what the witnesses are going to say. If the
17 government goes ahead and puts together what their why is as a
18 proffer, almost as a, "this is what the witness would testify to on
19 this issue and this is why we want to call them." Then we could
20 agree that, "Yeah, that's what the witness told us as well," or if
21 the witness didn't tell us that, we could just go to the witness
22 again and say, "Is this what you're going to say?" Assuming the
23 witness says, "Yes, I would testify to that," there would be no

1 conflict as to what the witness will testify about. Then we could
2 show how the alternative that Captain Tooman suggested of the witness
3 has an answer that has greater specificity and simply adopts it when
4 asked that question of the why. That seems to be the only example
5 provided by Major Fein as to why something needs to be closed.

6 MJ: And I know I'm going back and forth between the parties
7 here, but I do have -- that's where I was going with the categorical
8 piece, Major Fein. Tell me if I'm wrong here. It seems like it the
9 could -- you have the witnesses from the merits on the could cause
10 damage issue and then you have the witnesses on sentencing on the did
11 cause damage issue.

12 TC[MAJ FEIN]: Ma'am, we need to go witness by witness by
13 witness because what Mr. Coombs just said is not accurate. It is
14 only certain witnesses the why. We have said even using Special
15 Agent Shaver, I said earlier, that is forensic testimony that should
16 be done in a closed session. It's not just the why. It's witness by
17 witness; it's issue by issue. There are other issues that when
18 Captain Tooman is done, if it may please the Court for me to lay out
19 legal issues involved here.

20 MJ: It would.

21 TC[MAJ FEIN]: Thank you.

22 ADC[CPT TOOMAN]: Ma'am, just one other -- one other I guess
23 comment or request with respect to the filing for next session, we

1 would request that the government put in their filing or include in
2 there the number of witnesses and, I guess, even which witness would
3 be mooted by PFC Manning's plea tomorrow. I think after tomorrow we
4 will have an idea, we will have seen the plea and they could probably
5 address which witnesses wouldn't be needed as a result of that plea.

6 ADC[CPT TOOMAN]: Subject to your questions.

7 MJ: I think I just asked them. Thank you. Just for the
8 record, is the defense requesting a closed Article 39(a) session to
9 go witness by witness?

10 ADC[CPT TOOMAN]: We are, yes, ma'am.

11 MJ: Thank you.

12 TC[MAJ FEIN]: Ma'am, a few things, first -- again, it started
13 earlier today. We agree with the defense. We're not arguing with
14 the defense that these scenarios could be created for the majority of
15 the witnesses. It's only certain witnesses at certain points. What
16 the defense, in effect, is asking the Court to do is have the
17 government present its case, proffer the testimony, present the
18 direct so the defense can have it and they can figure out what
19 alternatives are or are not available. They've talked to the
20 witnesses. If they think alternatives are available, they can
21 present them.

22 MJ: They have.

1 TC[MAJ FEIN]: No, Your Honor, per witness. They gave you
2 subject matter by subject matter, but even the example give just now,
3 Your Honor, about an IED or a Soldier's death, it's the how the
4 Soldier died, it's what type of IED was in place, it's where that
5 information came from, how it came from WikiLeaks, how it came from
6 PFC Manning. All of that is tied in there.

7 We agree with the defense. A witness can stand up there
8 and say, "One U.S. Soldier was killed because of an IED and that IED
9 report was in the WikiLeaks' material." That could happen, but
10 nothing else could happen there. Defense more -- there's no question
11 defense will get up and say, "How is it you know, witness, or you
12 don't know that it came from the WikiLeaks report? You don't know.
13 It's too attenuated. They're going to make as many arguments to
14 mitigate that as possible on sentencing.

15 The government should not be able -- first, shouldn't have
16 to present its entire case to the defense for them to get a preview
17 in some form of a proffer unless there is an actual negotiation going
18 on, shouldn't have to do that simply for a *Grunden* hearing.

19 Second, the government shouldn't ----

20 MJ: Well, why not? If I have to make narrowly tailored
21 findings that the testimony ----

22 TC[MAJ FEIN]: Yes, ma'am. The United States argues we've done
23 that, Your Honor. We have provided the Court specific areas that a

1 specific witness is going to testify to. We didn't provide the
2 direct, of course. We didn't provide the exact -- we proffered what
3 they're going to testify to, but not line-by-line. That's what the
4 defense is asking for.

5 I mean, good example, what's not redacted in this filing --
6 we'll go back to page 30, Your Honor, number 30. This list is
7 unclassified. The Ambassador will testify about the contents of the
8 originating cables, list the cables, the very specific cables and why
9 the information -- this isn't new, Your Honor -- why the information
10 requires protection against unauthorized disclosure for reasons the
11 national defense of foreign relations. Of these cables, this
12 information is properly -- and then we explain why it's been properly
13 classified. Well, these cables have been in the defense's
14 possession. They know what they are.

15 We can -- we can, I guess, regurgitate the classified
16 information from those for the Court, if that's what the defense is
17 arguing should happen. But for us to have to lay out a proffer of
18 the exact testimony that this ambassador is going to testify to,
19 there's no rule that should require that the government present its
20 entire case up front. In that case, Your Honor, we might as well
21 unfortunately wait until this happens to see -- see if -- the call
22 for closure. The government's trying to come to a procedure that's
23 more -- provides that judicial economy to figure this out ahead of

1 time without either side having to divulge its entire case line by
2 line. That's the first issue, Your Honor, about lacks specificity.

3 I just -- to just dovetail this Soldier being killed by X
4 -- you know it goes back to what type of IED was it. None of those
5 information -- none of that information could ever be described.
6 It's simply saying "country X." That's fine. But when you start
7 talking about relationships between the countries and that type of
8 information, it is classified. The defense might not agree with
9 that, but it's classified. We've provided the proper authorities to
10 say it's classified. It is classified. Again, the government's
11 proffered that already.

12 Second, Your Honor, the -- having a very convoluted
13 alternative summary redactions code names, as the defense has
14 outlined in their motion, or as I ready earlier that we filed, that
15 is in fact, Your Honor, court closure, more convoluted, more
16 alternatives put in place to a certain point is in effect a court
17 closure. It's one thing to have a simple redaction as described
18 before to say, "The contents on this page are necessarily material to
19 the issue the person's testifying to, but the top and bottom are, so
20 we'll redact this." It's a single document, it's a single issue
21 being done. But if an individual is taking the stand and every word
22 of theirs references a syllabus, we in effect have closed the court
23 to their testimony.

1 MJ: Let me go back to my original question.

2 TC[MAJ FEIN]: Yes, ma'am.

3 MJ: We can probably -- well, first of all, is the government
4 requesting a closed session for purposes of going witness by witness
5 on this issue?

6 TC[MAJ FEIN]: Your Honor -- No, Your Honor, the United States
7 does not think a closed session is required to go witness by witness,
8 because we'd say what has been proffered should be sufficient for
9 court findings to narrowly tailor this.

10 Second, Your Honor, this was done at the Article 32. We
11 can provide the Court the transcript. If that's not sufficient, we
12 can discuss another way, but right now the defense like the idea of a
13 government witness being -- having a trial run here to testify.
14 Again, that's ----

15 MJ: That was my suggestion, not theirs.

16 TC[MAJ FEIN]: Yeah, but they're supporting it, Your Honor,
17 saying how that is somehow different -- it was your suggestion, Your
18 Honor, but the counter suggestion was we already have this done.
19 Then the defense said, "No, that's not sufficient." Well, it is
20 sufficient. It is a witness who had narrowly tailored testimony, if
21 we use Special Agent Shaver, it was about forensics.

22 MJ: But isn't that -- in your 34 witnesses -- or your 33
23 witnesses that you're talking about, you have 21 on the merits and 15

1 of those 21 are going to be talking about potential to cause harm;
2 isn't that right?

3 TC[MAJ FEIN]: They're going to be talking about the facts, Your
4 Honor, that would lead them to believe of the potential. It will
5 say, you know, this IED information and what about that IED
6 information could cause harm.

7 MJ: If each of these 15 is going to be talking about that in
8 some nuance with respect to some of the information that's been
9 disclosed in this case ----

10 TC[MAJ FEIN]: Yes, ma'am.

11 MJ: So in a certain sense, all 15 of those witnesses the basis
12 for closure is the same?

13 TC[MAJ FEIN]: Yes, ma'am.

14 MJ: So what is the government's objection to having one of
15 those 15 witnesses come at the next session and testify and do a dry
16 run so I can make a determination -- I can have an idea based on how
17 this proceeds because the same closure issues would involve the other
18 14?

19 TC[MAJ FEIN]: Ma'am, if the United States could have some time
20 to think about the idea of having one of its witnesses come before
21 hand.

1 MJ: All right. And the same thing for sentencing. Aren't --
2 these 14 sentences, are they all going to be testifying about actual
3 harm caused?

4 TC[MAJ FEIN]: Yes, ma'am.

5 MJ: So the same basis for closure, just different facts would
6 apply to each of those 14 witnesses; isn't that true?

7 TC[MAJ FEIN]: In a very general sense, yes, ma'am, but, you
8 know, some will be ----

9 MJ: Well, ideally one of the sentencing witnesses and one of
10 the findings witnesses would be very helpful to the Court.

11 TC[MAJ FEIN]: Yes, ma'am. But the reason -- the reason I would
12 say it's not necessarily -- it's not a template to be used, at least
13 for sentencing. Some of it's much more mechanical, Your Honor.
14 There's no question that those that we've been calling subject matter
15 experts or something like that is going to be very mechanical
16 testimony. The OCAs will really be a mechanical testimony as well.
17 When you get to sentencing, Your Honor, it -- talking about the
18 different types of data that was compromised and the different types
19 of data and its effect on the different areas of national security,
20 Department of Defense, Department of State, other organizations,
21 relationship -- I mean, everyone -- it's not cumulative testimony.
22 If it was cumulative it would be very easy because it would all be
23 the same.

1 MJ: Well, I understand. It's similar type of testimony about
2 different things?

3 TC[MAJ FEIN]: Yes, ma'am.

4 MJ: All right.

5 TC[MAJ FEIN]: You know, the damage to our national security
6 based off of the relationship with this type of country or this group
7 or what the enemy does and doesn't have and what they're doing or not
8 doing against the United States based off of what PFC Manning did.
9 That's the type of information. Yes, I think it could -- we'll look
10 at it, Your Honor.

11 MJ: Because where I'm going with this, with a dry run the
12 witness can come in. It's going to be a witness that would be like
13 the other witnesses, similar type of closure issues. We go through
14 the testimony, you have the alternatives that you're going to use
15 with a particular witness, you have the piece of testimony that you
16 want to use in closed session. Defense has their proposed
17 alternatives. We try to work through the alternatives. We're on the
18 record, we use the alternatives; we see how that works. We go into
19 closed session. You question the witness in closed session. It
20 gives -- it would give me an idea of whether it's possible to elicit
21 the nuance testimony that you're talking about from the witness. Do
22 we have to have a closed session to do it? I really can't figure
23 that out without something more concrete.

1 TC[MAJ FEIN]: Yes, ma'am.

2 MJ: I have to try alternatives and reject them.

3 TC[MAJ FEIN]: Yes, ma'am. If we may at least look at that and
4 before the end of the week -- before we leave this current motions
5 hearing, I'll have a proposal.

6 A lot of this, Your Honor, also hinges on the effect of the
7 plea. That's why one -- the government has unfortunately tried --
8 not tried to make it painful, but is unfortunately making the plea
9 issue a little bit more nuanced, because this could have an effect
10 and could have an effect on everything we're talking about. Whether
11 we go forward or not, whether most of these issues go away, the
12 sentencing won't go away, Your Honor. While most of the OCAs and
13 their subject matter experts, that type of testimony, it could all
14 change, but the problem right now is -- we'll look at it, Your Honor.

15 MJ: Okay.

16 TC[MAJ FEIN]: A lot of these issues could just go away
17 depending on the effect of the plea, if the accused is found
18 provident.

19 MJ: Well, when are you going to know that?

20 TC[MAJ FEIN]: That's the problem, Your Honor, and that's why
21 unfortunately this is circular. We built the calendar knowing ----

1 MJ: I guess where I'm going with this is -- well, we can meet
2 on it later. Right now we're scheduled to go through Friday. We're
3 having the plea dialogue tomorrow.

4 TC[MAJ FEIN]: Well, unfortunately, ma'am, the government always
5 plans on worse case. The worst case is the plea could go through,
6 but the accused could always change his -- change his actual plea up
7 until the very end. No matter what the government always has to plan
8 for this. Now, whether we actually need to call witness X, that's a
9 different story. We will be able to identify that and move forth,
10 but identifying which witness is -- I mean defense has launched a lot
11 to the Court to somehow ask us to give them all this information now,
12 but another thing that was asked a moment ago was, give them a list
13 of what witnesses we don't intend to probably call based off the
14 plea. Well, okay, that's something else, but that's all -- that's
15 all, I guess, issues for the parties to discuss and then to come to
16 an agreement or not. If there's no agreement, then all of this could
17 be a waste of the Court's time.

18 MJ: That's why I asked ----

19 TC[MAJ FEIN]: Yes, ma'am.

20 MJ: ---- if you'll know this at the next session.

21 TC[MAJ FEIN]: And that's why I think that's really the focus,
22 Your Honor, is if the parties agree to all of this, then all of this,
23 even the government calling a witness ahead of trial to allow some

1 form of inquiry by the defense in order to do that and get a first
2 bite at a witness, not at trial -- that might be a -- the government
3 might not think it's a viable option, but if we all agree then it
4 wouldn't be needed. If we can, before this session closes this week,
5 we'll have a proposal on an alternative to the *Grunden* issues.

6 MJ: All right. So am I hearing from both of you -- well, the
7 defense has already asked for a closed session with respect to this.
8 Is now not a good time to have that?

9 TC[MAJ FEIN]: We can have a closed session today, ma'am.

10 MJ: You want it today?

11 CDC[MR. COOMBS]: We have no objection to doing a closed
12 hearing today.

13 MJ: Well, the government told me before he didn't want one.

14 TC[MAJ FEIN]: No, ma'am. The government still doesn't think
15 it's needed because of the proffer that's in the filing, the
16 classified filing, is sufficient to inform the Court on where the
17 scalpel should be drawn on witness-by-witness, issue-by-issue.

18 MJ: Well, I would like to hear from the parties on why it is or
19 why it isn't ----

20 TC[MAJ FEIN]: Yes, ma'am.

21 MJ: ---- on specific information. With that in mind, did the
22 government -- I believe our M.R.E. 505(i) requires the government to
23 ask for a closed session.

1 TC[MAJ FEIN]: Then ma'am, if you want to hear more details on
2 that, then yes, the government agrees we should have a closed session
3 this afternoon.

4 MJ: Okay. So would you like to take a lunch break and then do
5 it ----

6 TC[MAJ FEIN]: Yes, ma'am.

7 MJ: ---- or go ahead and go into it right now?

8 TC[MAJ FEIN]: Preferably a lunch break and then we can move
9 into it. May I have a moment, Your Honor?

10 MJ: Yes.

11 TC[MAJ FEIN]: Yes, ma'am. Lunch break and then while -- during
12 the lunch break, we could have the session set up. Ma'am, do you
13 want to go into a quick recess before that for findings for this
14 closed session or do that afterwards?

15 MJ: Why don't we go ahead and do a quick recess? Ten minutes
16 will be sufficient for the Court. Court is in recess.

17 **[The Article 39(a) session recessed at 1150, 27 February 2013.]**

18 **[The Article 39(a) session was called to order at 1209, 27 February**
19 **2013.]**

20 MJ: This Article 39(a) session is called to order. Let the
21 record reflect all parties present when the Court last recessed are
22 again present in court.

1 Does either side have anything to address before I announce
2 findings for a closed M.R.E. 505(i) hearing?

3 TC[MAJ FEIN]: No, Your Honor.

4 CDC[MR. COOMBS]: No, ma'am.

5 MJ: All right. In accordance with R.C.M. 806(b)(2), M.R.E.
6 505(i) and the First and Sixth Amendments to the Constitution, the
7 Court finds and rules as follows:

8 At the request of the Court and the defense the government
9 has moved for an in camera closed proceeding concerning the use of
10 classified information at trial.

11 1. Pursuant to Military Rule of Evidence 505(i)(3), the
12 Court has examined the classified filing of the prosecution, response
13 to scheduling order, Article 39(a) session on closure and Motion to
14 Close the Courtroom for Specified Testimony and the original
15 classification reviews in this case and finds that the government has
16 demonstrated the disclosure of the classified information at issue
17 could reasonably be expected to cause damage to the National Security
18 in the degree to warrant classification under Executive Order,
19 statute or regulation.

20 2. Closure is narrowly tailored to protect the overriding
21 national security interests. A hearing regarding this issue has been
22 open to the maximum extent possible without disclosing the actual
23 classified information. The Court requires the parties' views on the

1 actual classified information itself in arriving at decisions
2 regarding closure at trial, the extent of any trial closure and the
3 viability of alternatives to closure for each witness's testimony.
4 The Court has considered reasonable alternatives to closure of this
5 M.R.E. 505 hearing and finds that none are accurate to allow the
6 parties to fully litigate their positions regarding the use of the
7 actual classified information at trial without disclosing the
8 classified information at issue.

9 Now, that will be the final proceeding of the day; is that
10 correct?

11 TC[MAJ FEIN]: Yes, Your Honor.

12 ADC[CPT TOOMAN]: Yes, Your Honor.

13 MJ: So as far as -- we're going to take a lunch break and then
14 come back and do that closed hearing. As far as public hearings,
15 that's going to be it for today. We're going to start up at 0930
16 tomorrow; is that correct?

17 TC[MAJ FEIN]: Yes, ma'am.

18 ADC[CPT TOOMAN]: Yes, Your Honor.

19 MJ: And we'll be proceeding with PFC Manning's plea at that
20 time.

21 Is there anything else we need to address? How long would
22 you like for lunch?

1 TC[MAJ FEIN]: 1330 is fine, Your Honor.
2 MJ: All right. Court is in recess until 1330.
3 [The Article 39(a) session recessed at 1211, 27 February 2013.]
4 [END OF PAGE]

Pages 6630 through 6700 of this transcript are classified “SECRET”. This session (27 February 2013, Session 1) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

1 [The Article 39(a) session was called to order at 1003, 28 February
2 2013.]

3 MJ: This Article 39(a) session is called to order. Let the
4 record reflect all parties present when the court last recessed are
5 again present in court. Is there anything we need to address before
6 we move into the substantive areas we're going to look at today?

7 CDC[MR.COOMBS]: No, Your Honor.

8 TC[MAJ FEIN]: Your Honor, just to recap for the open record
9 that we closed the -- we had a closed session previous to now and the
10 record of trial -- or, excuse me, the recording was classified at the
11 SECRET/NOFORN level and currently, now, is unclassified. There's
12 also -- the court security officer conducted an inspection and filled
13 out a checklist from that inspection and made sure the court was
14 properly cleared and then properly opened during that closed session
15 and that checklist has been filed with the government to be put in
16 the allied documents and not marked as an appellate exhibit.

17 MJ: All right. Does either side -- or, defense, do you have
18 any objection to not marking these administrative documents as
19 appellate exhibits?

20 CDC[MR.COOMBS]: No, Your Honor.

21 MJ: All right. We will proceed.

22 PFC Manning, it has been a long time since we have gone
23 over, basically, what we go over with -- at the arraignment. And, if

1 you remember, at the arraignment, we talked to you -- I talked to you
2 about your rights to counsel and you've had several changes -- or
3 you've had changes along the way in the counsel and you advised me at
4 -- the last time we had that discussion that you wished to be
5 represented by Mr. Coombs, by Major Hurley, and by Captain Tooman.
6 Is that the -- still your choice?

7 ACC: Yes, Your Honor.

8 MJ: Okay. And we also talked about your forum rights and I'd
9 like to go over that, again, with you as well. You have the right to
10 be tried by a court consisting of at least five officer members, that
11 is, a court composed of commissioned and/or warrant officers. If you
12 request it, you could be tried by a court consisting of at least one-
13 third enlisted members, but none of those enlisted members could come
14 from your unit. You are also advised that no member of the court can
15 be junior in rank to you.

16 Do you understand what I've said so far?

17 ACC: Yes, Your Honor.

18 MJ: Now, if you're tried by court members, the members would
19 vote by secret, written ballot and two-thirds of the members must
20 agree before you could be found guilty of any offense. If you were
21 found guilty, then two-thirds must also agree in voting on a sentence
22 and if that sentence included confinement for more than 10 years,
23 then three-fourths of the members would have to agree.

1 Do you understand that?

2 ACC: Yes, Your Honor.

3 MJ: You may also request to be tried by military judge, alone.

4 If your request is approved, there would be no court members and the

5 military judge, alone, would decide whether you are guilty or not

6 guilty and, if you are found guilty, the military judge, alone, would

7 determine your sentence.

8 Do you understand the difference between trial by members

9 and trial by military judge, alone?

10 ACC: Yes, ma'am.

11 MJ: By what type of court do you wish to be tried?

12 ACC: Judge alone, ma'am.

13 MJ: Is there written request for trial by military judge,

14 alone?

15 CDC[MR.COOMBS]: There is, Your Honor. It has been marked as

16 Appellate Exhibit 492.

17 MJ: May I see it, please? [Receives AE 492 from the court

18 reporter.] All right, I have before me what has been marked as

19 Appellate Exhibit 492. PFC Manning, do you have a copy of Appellate

20 Exhibit 492 in front of you?

21 ACC: Yes, ma'am.

22 MJ: Is that your signature, there in Block 1c?

23 ACC: Yes, Your Honor.

1 MJ: All right. Did you know that I would be military judge in
2 your case when you signed this document?

3 ACC: Yes, Your Honor.

4 MJ: Is your request a voluntary one? Did you make this of your
5 own free will?

6 ACC: Yes, Your Honor.

7 MJ: If I approve your request for trial by me, alone, do you
8 understand you're giving up your right to trial with members?

9 ACC: Yes, Your Honor.

10 MJ: Do you still want to be tried by me, alone?

11 ACC: Yes, ma'am.

12 MJ: All right. Your request is approved and the Court is
13 assembled. What is today's date?

14 ADC[MAJ HURLEY]: It's the 28th, ma'am.

15 MJ: Thank you. All right. Major Fein, just to remind me,
16 there's been an amendment in the convening order since the Court
17 began. Can you, just for the record, detail what convening order we
18 are on -- what the latest convening order is?

19 TC[MAJ FEIN]: Yes, ma'am. We're currently operating under
20 Court-Martial Convening Order Number 1, dated 2000 -- dated 11
21 February 2013, Headquarters, U.S. Army Military District of
22 Washington.

23 MJ: All right. Is the accused ready to enter pleas?

PLEA

1 CDC[MR.COOMBS]: Yes, Your Honor.

2 MJ: All right. Mr. Coombs -- PFC Manning, Mr. Coombs will
3 speak on your behalf. Accused and counsel, please rise.
4 [The accused and his counsel did as directed.]

5 MJ: PFC Bradley Manning, how do you plead? Before receiving
6 your plea, I advise you that any motions to dismiss or grant other
7 appropriate relief should be made at this time. Your defense counsel
8 will speak for you.

9 CDC[MR.COOMBS]: Your Honor, my client pleads as follows:

10 To The Specification of
11 Charge I and to Charge I:
12 To Specification 1 of
13 Charge II:
14 To Specification 2
15 of Charge II:

Not Guilty.

Not Guilty.

Guilty, except the words
and figures, "15 February
2010" and "5 April 2010,"
Substituting therefor the
words and figures, "14
February 2010" and "21
February 2010." Further
excepting the words,
"information related to the
national defense, to wit."
Further excepting the words,
"with reason to believe such
information could be used to
the injury of the United
States or to the advantage of
any foreign nation, willfully
communicate, deliver,
transmit, or cause to be
communicated, delivered, or
transmitted," substituting
therefor the words, "did
willfully communicate."

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9 To Specification 3
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40 To Specification 4
41 of Charge II:
42 To Specification 5
43 of Charge II:
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Further excepting the words
and figures, "in violation of
18 U.S.C. Code [sic], Section
793(e)." To the excepted
words and figures:
Not Guilty. To the
substituted words and
figures: Guilty.

Guilty, except the words and
figures, "22 March 2010" and
"26 March 2010," substituting
therefor the words and
figures, "17 March 2010" and
"22 March 2010." Further
excepting the words,
"information related to the
national defense, to wit."
Further excepting the words,
"with reason to believe such
information could be used to
the injury of the United
States or to the advantage of
any foreign nation, willfully
communicate, deliver,
transmit or cause to be
communicated, delivered, or
transmitted," substituting
therefor the words, "did
willfully communicate."
Further excepting the words
and figures, "in violation of
18 U.S. Code, Section
793(e)." To the excepted
words and figures:
Not Guilty. To the
substituted words and
figures: Guilty.

Not Guilty.

Guilty, except the words and
figures, "31 December 2009"
and "9 February 2010,"

substituting therefor the words and figures, "5 January 2010" and "3 February 2010." Further excepting the words, "information related to the national defense, to wit." Further excepting the words "with reason to believe such information could be used to the injury of the United States or to the advantage any foreign nation, willfully communicate, deliver, transmit or cause to be communicated, delivered, or transmitted," substituting therefor the words, "did willfully communicate." Further excepting the words and figures, "in violation of 18 U.S. Code, Section 793(e)." To the excepted words and figures: Not Guilty. To the substituted words and figures: Guilty.

To Specification 6
of Charge II:
To Specification 7
of Charge II:

Not Guilty.

Guilty, except the words and figures, "31 December 2009" and "9 February 2010," substituting the words and figures, "5 January 2010" and "3 February 2010." Further excepting the words, "information related to the national defense, to wit." Further excepting the words, "with reason to believe such information could be used to the injury of the United States or to the advantage any foreign nation, willfully communicate, deliver,

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14 To Specification 8
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transmit or cause to be
communicated, delivered, or
transmitted," substituting
therefor the words, "did
willfully communicate."
Further excepting the words
and figures, "in violation of
18 U.S. Code, Section
793(e)." To the excepted
words and figures:
Not Guilty. To the
substituted words and
figures: Guilty.

Not Guilty.

Guilty, except the words and
figures, "between on or about
8 March 2010" and "on or
about 27 May 2010,"
substituting therefor the
words and figures, "on or
about 8 March 2010." Further
excepting the words,
"information related to the
national defense, to wit."
Further excepting the words,
"with reason to believe such
information could be used to
the injury of the United
States or to the advantage
any foreign nation, willfully
communicate, deliver,
transmit or cause to be
communicated, delivered, or
transmitted," substituting
therefor the words, "did
willfully communicate."
Further excepting the words
and figures, "in violation of
18 U.S. Code, 793(e)." To
the excepted words and
figures: Not Guilty. To the
substituted words and
figures: Guilty.

To Specification 10
of Charge II:

Guilty, except the words and figures, "11 April 2010" and "27 May 2010," substituting therefor the words and figures, "10 April 2010" and "12 April 2010." Further excepting the words, "information related to the national defense, to wit." Further excepting the words, "with reason to believe such information could be used to the injury of the United States or to the advantage any foreign nation, willfully communicate, deliver, transmit or cause to be communicated, delivered, or transmitted," substituting therefor the words, "did willfully communicate." Further excepting the words and figures, "in violation of 18 U.S. Code, Section 793(e)." To the excepted words and figures: Not Guilty. To the substituted words and figures: Guilty.

To Specification 11
of Charge II:
To Specification 12
of Charge II:
To Specification 13
of Charge II:

Not Guilty.

Not Guilty.

Guilty, except the words and figures, "27 May 2010," substituting therefor the words and figures, "4 May 2010." Further excepting the words, "knowingly exceeded authorized access," substituting therefor the words, "knowingly accessed." Further excepting the words,

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13 To Specification 14
14 of Charge II:

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40 To Specification 15
41 of Charge II:

"with reason to believe that such information so obtained could be used to the injury of the United States or to the advantage any foreign nation, in violation of 18 U.S. Code, Section 1030(a)(1)." To the excepted words and figures: Not Guilty. To the substituted words and figures: Guilty.

Guilty, except the words and figures, "15 February 2010" and "18 February 2010," substituting therefor the words and figures "14 February 2010" and "15 February 2010." Further excepting the words, "knowingly exceeded authorized access," substituting therefor the words, "knowingly accessed." Further excepting the words, "with reason to believe that such information so obtained could be used to the injury of the United States or to the advantage any foreign nation, in violation of 18 U.S. Code, Section 1030(a)(1)." To the excepted words and figures: Not Guilty. To the substituted words and figures: Guilty.

42 Guilty, except the words and figures, "between on or about 15 February 2010" and "on or about 15 March 2010," substituting therefor the

words and figures, "on or about 8 March 2010." Further excepting the words, "information related to the national defense, to wit." Further excepting the words, "with reason to believe such information could be used to the injury of the United States or to the advantage any foreign nation, willfully communicate, deliver, transmit or cause to be communicated, delivered, or transmitted," substituting therefor the words, "did willfully communicate." Further excepting the words and figures, "in violation of 18 U.S. Code, Section 793(e)." To the excepted words and figures: Not Guilty. To the substituted words and figures: Guilty.

To Specification 16
of Charge II:
To Charge II:

Not Guilty.
Guilty.

To Specification 1
of Charge III:
To Specification 2
of Charge III:
To Specification 3
of Charge III:
To Specification 4
of Charge III:

Not Guilty.
Not Guilty.
Not Guilty.
Not Guilty.

1 To Specification 5
2 of Charge III:

Guilty, except the words and
figures, "1 November 2009,"
substituting therefor the
words and figures, "8 January
2010." To the excepted words
and figures: Not Guilty. To
the substituted words and
figures: Guilty.

10 To Charge III:

Guilty.

12 MJ: Thank you. Please be seated.

13 [The accused and his counsel did as directed.]

14 MJ: PFC Manning, what is your full name?

15 ACC: My full name is Bradley Edward Manning, Your Honor.

16 MJ: All right. Are you in the active Army?

17 ACC: Yes, Your Honor.

18 MJ: How long have you been in the active Army?

19 ACC: At least -- nearly 5 1/2 years, Your Honor.

20 MJ: Have you had any breaks in service?

21 ACC: No, Your Honor.

22 MJ: Are you a United States citizen?

23 ACC: Yes, Your Honor.

24 MJ: All right. Before we talk about the offenses that you're
25 pleading guilty to, I want to go over a few issues with you to make
26 sure that you understand the full meaning and effect of your guilty
27 plea.

28 Do you have a copy of that charge sheet in front of you?

1 ACC: Yes, Your Honor.

2 MJ: Do you have a copy of the lesser included offenses that
3 you're pleading guilty to?

4 ACC: Yes, Your Honor.

5 MJ: First of all, I want to talk about your waiver of your
6 R.C.M. 707 and Sixth Amendment portions of your speedy trial motion.
7 Your defense counsel made a motion to dismiss your case because the
8 government violated your right to a speedy trial. He provided three
9 grounds for the motion: R.C.M. 707, the Sixth Amendment, and Article
10 10. The Court denied the motion and read the ruling on Tuesday, this
11 week. Your plea of guilty waives your speedy trial motion for the
12 offenses to which you're pleading guilty to except for the Article 10
13 -- the litigated Article 10 part of your motion.

14 Do you understand that?

15 ACC: Yes, Your Honor.

16 MJ: That means an appellate court won't consider my ruling
17 denying your speedy trial motion on R.C.M. 707 or Sixth Amendment
18 grounds for the offenses to which you are pleading guilty to.

19 Do you understand that?

20 ACC: Yes, ma'am.

21 MJ: Did Mr. Coombs explain that to you?

22 ACC: Okay. Yes, Your Honor.

23 MJ: Now, do you have any questions about this?

1 ACC: No, Your Honor.

2 MJ: Okay. And knowing what Mr. Coombs told you and what I have
3 told you, do you still want to plead guilty knowing that your R.C.M.
4 707 and Sixth Amendment grounds for your speedy trial motion our
5 waived with respect to the offense that you're pleading guilty to?

6 ACC: Yes, Your Honor.

7 MJ: Okay. The second issue I want to discuss with you is your
8 discussion with me during the providence inquiry. What we call the
9 "providence inquiry" is basically our dialogue to establish that
10 you're pleading guilty and you're admitting guilt to the elements of
11 the lesser included offenses that you're pleading guilty to.

12 Now, I want to talk to you about how your plea to the
13 lesser included offenses impacts the case if the government decides
14 to go forward on the merits with the greater offenses. Your
15 statements in the providence inquiry cannot be used by the government
16 or considered by me on the merits if the government tries to prove
17 the greater offenses.

18 Do you understand that?

19 ACC: Yes, Your Honor.

20 MJ: However, your plea can be used to establish elements of the
21 lesser included offense that are included within the greater offense
22 without further proof by the government.

23 Do you understand that?

1 ACC: Yes, Your Honor.

2 MJ: Now, in this case, you're pleading guilty to lesser
3 included offenses of specifications charging violations of 18 United
4 States Code, Section 793(e) and 1030(a)(1). As we'll discuss later,
5 the elements of 18 United States Code, Section 793(e) that the
6 government would have to prove beyond a reasonable doubt and how I
7 would instruct on them are as follows:

8 Charge II, Specifications 2, 3, 5, 7, 9, 11, and 15,
9 transmitting defense information; this is how I would instruct if it
10 -- if there was going to be a panel and I was--and these are the
11 instructions I will follow even though I'm not going to read them in
12 a trial by a military judge, alone. In Specifications 2, 3, 5, 7, 9,
13 10, 11, and 15 of Charge II, you are charged with the offense of
14 transmitting defense information in violation of Title 18, United
15 States Code, Section 793(e) and Article 134, UCMJ. In order to find
16 the accused guilty of this offense, you must be convinced by legal
17 and competent evidence beyond a reasonable doubt:

18 1. That, at or near Contingency Operating Station Hammer,
19 Iraq:

20 Specification 2, between on or about 15 February 2010 and
21 on or about 5 April 2010, the accused, without authorization, had
22 possession of, access to, or control over a video file named "12 July
23 07 CZ Engagement Zone 30 GC Anyone.avi".

1 Specification 3, between on or about 22 March 2010 and on
2 or about 26 March 2010, the accused, without authorization, had
3 possession of, access to, or control over more than one classified
4 memorandum produced by a United States government agency.

5 Specification 5, on or about 31 December 2009 and on or
6 about 9 February 2010, the accused, without authorization, had
7 possession of, access to, or control over more than 20 classified
8 records from the Combined Information Data Network Exchange, Iraq
9 database.

10 Specification 7, between on or about 31 December 2009 and
11 on or about 9 February 2010, the accused, without authorization, had
12 possession of, access to, or control over more than 20 classified
13 records from the Combined Information Data Network Exchange,
14 Afghanistan database.

15 Specification 9, between on or about 8 March 2010 and on or
16 about 27 May 2010, the accused, without authorization, had possession
17 of, access to, or control over more than three classified records
18 from the United States Southern Command database.

19 Specification 10, between on or about 11 April 2010 and on
20 or about may 27 May 2010, the accused, without authorization, had
21 possession of, access to, or control over more than five classified
22 records relating to a military operation in Farah Province,
23 Afghanistan, occurring on or about 4 March 2009.

1 Specification 11, between on or about 1 November 2009 and
2 on or about 8 January 2010, the accused, without authorization, had
3 possession of, access to, or control over a file named "BE22PAX.zip"
4 containing a video named "BE22PAX.wmv".

5 And, Specification 15, between on or about 15 February 2010
6 and on or about 15 March 2010, the accused, without authorization,
7 had possession of, access to, or control over a classified record
8 produced by a United States intelligence organization dated 18 March
9 2008.

10 The following elements are common to all of the
11 specifications:

12 Element two, the classified records, memorandum, videos,
13 and files described for each specification in element one was
14 information relating to the national defense.

15 Element three, the accused had reason to believe that the
16 classified records, memorandum, videos, and files described for each
17 specification in element one, could be used to the injury of the
18 United States or the advantage of any foreign nation.

19 Four, the accused willfully communicated, delivered, or
20 transmitted or attempted or cause to be communicated, delivered, or
21 transmitted the above material to any person not authorized to
22 receive it.

Five, at the time, 18 United States Code, Section 793(e) was in existence on the dates alleged in specifications.

Six, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Now, the definitions I would give if this was a members case and that I will follow if the government decides to go forward with the greater offense are as follows:

An act is done "willfully" if it is done voluntarily and intentionally with the specific intent to do something the law forbids, that is, with a bad purpose to disobey or disregard the law.

"Possession" is a commonly used and understood word. It means the act of having or holding property or the detention of property in one's power or command. "Possession" may mean actual, physical possession or constructive possession. "Constructive possession" means having the ability to exercise dominion or control over an item. Possession inherently includes power or authority to preclude control by others. It is possible, however, for more than one person to possess an item simultaneously as when several people share control of an item. A person has unauthorized possession of documents, photographs, videos, or computer files when he possesses such information under circumstances or at a location which is contrary to law or regulation for the convenience of his employment.

1 The term "national defense" is a broad term which refers to
2 the United States Military and Naval establishments and to all
3 related activities of national preparedness. To prove the documents,
4 writings, photographs, videos, or information related to national
5 defense, there are two things the government must prove: one, that
6 the disclosure of the material would be potentially damaging to the
7 United States or might be useful to an enemy of the United States;
8 and, two, that the material is closely held by the United States
9 Government, in that the relevant government agency has sought to keep
10 the information from the public, generally, and has not made the
11 documents, photographs, videos, or computer files available to the
12 general public.

13 Where the information has been made public by the United
14 States Government and is found in sources lawfully available to the
15 general public, it does not relate to the national defense.
16 Similarly, where the sources of information are lawfully available to
17 the public and the United States Government has made no effort to
18 guard such information, the information, itself, does not relate to
19 the national defense.

20 In determining whether material is closely held, you may
21 consider whether it has been classified by appropriate authorities
22 and whether it remained classified on the date or dates pertinent to
23 the charge sheet. You may consider whether the information was

1 classified or not in determining whether the information relates to
2 the national defense. However, the fact that the information is
3 designated as classified does not, in and of itself, demonstrate that
4 the information relates to the national defense.

5 "Reason to believe" means that the accused knew facts from
6 which he concluded or reasonably should have concluded that the
7 information could be used for the prohibited purposes. In
8 considering whether the accused had reason to believe the information
9 could be used to the injury of the United States or to the advantage
10 of any foreign country, you may consider the nature of the
11 information involved. You need not determine that the accused had
12 reason to believe that the information would be used against the
13 United States, only that it could be so used.

14 Additionally, the likelihood of the information being used
15 to the injury of the United States or to the advantage of any foreign
16 nation must not be remote, hypothetical, speculative, far-fetched, or
17 fanciful. The government is not required to prove that the
18 information obtained by the accused was, in fact, used to the injury
19 of the United States or to the damage of any foreign nation. The
20 government does not have to prove that the accused had reason to
21 believe that his act could both injure the United States and be
22 advantageous to any foreign country; the statute reads in the
23 alternative. Also, the country to whose advantage the information

1 could be used may not necessarily be an enemy of the United States;
2 the statute does not distinguish between friend and enemy.

3 In determining whether the person who received the
4 information was entitled to receive it, you may consider all the
5 evidence introduced at trial, including any evidence concerning the
6 classification status of the information; any evidence relating to
7 law enforcement regulations governing the classification and
8 declassification of national security information; its handling,
9 use, and distribution; as well as any evidence relating to the
10 regulations governing the handling, use, and distribution of
11 information obtained from the classified systems.

12 I have taken judicial notice that Title 18, United States
13 Code, Section 793(e) was in existence on the dates alleged in
14 Specifications 2, 3, 5, 7, 9, 10, 11, and 15 of Charge II.

15 Conduct prejudicial to good order and discipline is conduct
16 which causes reasonably direct and obvious injury to good order and
17 discipline. Service discrediting conduct is conduct which tends to
18 harm the reputation of the service or lower it in public esteem.
19 With respect to prejudice to good order and discipline, the law
20 realizes that -- recognizes that almost any irregular or improper act
21 the part of the Servicemember could be regarded as prejudicial in
22 some indirect or remote sense. However, only those acts in which the
23 prejudice is reasonably direct and palpable is punished under this

1 article. With respect to service discrediting, the law recognizes
2 that almost any irregular or improper act on the part of the
3 Servicemember could be regarded as service discrediting in some
4 indirect or remote sense. However, only those acts which would have
5 a tendency to bring the service into disrepute or which tend to lower
6 it in public esteem are punishable under this article. Under some
7 circumstances, the accused's conduct may not be prejudicial to good
8 order and discipline, but, nonetheless, may be service discrediting
9 as I have explained those terms to you. Likewise, depending on the
10 circumstances, the accused's conduct could be prejudicial to good
11 order and discipline, but not service discrediting.

12 Now, you are pleading guilty to a lesser included offense
13 by exceptions and substitutions. Now, you understand that some of
14 the elements that -- you're pleading guilty, then, to all of the
15 specifications that have been charged under 18 United States Code,
16 793(e) and Article 134 except Specification 11. Now, I told you
17 earlier that your plea will establish certain elements that the
18 government has to prove for the greater offense. Now, your guilty
19 plea admits to the following elements:

20 It admits to element one, that you had unauthorized
21 possession of the video in Specification 2; more than one classified
22 memorandum produced by a government agency in Specification 3; more
23 than 20 classified records from the Combined Information Data Network

1 Exchange-Iraq database for Specification 5; more than 20 classified
2 records from the Combined Information Data Network Exchange-
3 Afghanistan database for Specification 7; more than three classified
4 records from the United States Southern Command Database for
5 Specification 9; more than five classified records relating to the
6 military operation in Farah Province, Afghanistan, occurring on or
7 about 4 May 2009 for Specification 10; and a classified record
8 produced by United States intelligence organization, dated 18 March
9 2008, for Specification 15.

10 Your guilty plea will also admit element four for all
11 specifications except Specification 11, that you willfully
12 communicated the above material to a person not authorized to receive
13 it.

14 Your guilty plea is also going to admit, for all
15 specifications except Specification 11, that under the -- elements
16 six, that under the circumstances, your conduct was to the prejudice
17 of good order and discipline in the armed forces or of a nature to
18 bring discredit upon the armed forces.

19 There are two or three elements left that the government
20 would have to prove beyond a reasonable doubt to find you guilty of
21 the greater offense in violation of 18 United States Code, Section
22 793(e), depending on the ruling that we discussed 2 days ago -- how I

1 rule on the issue and that -- I'm awaiting the parties' briefs on the
2 issue.

3 Those elements are:

4 Element two, that the classified records, memorandum,
5 videos, and files described for each specification was information
6 related to the national defense; the government is going to have to
7 prove that regardless of how I rule.

8 And element three, this is the element at issue, that I
9 would be -- that you had reason to believe the classified records,
10 memorandum, videos, and files described for each specification could
11 be used to the injury of the United States or to the advantage of any
12 foreign nation.

13 And element six, the government will also have to prove
14 regardless of how I rule on element three, at the time, 18 United
15 States Code, Section 793(e) was in existence on the dates of the
16 specification. Now, with respect to element six, I take judicial
17 notice of the statute, so the government doesn't have to present any
18 further evidence to establish its existence. That leaves elements
19 two and three.

20 The issue the parties are briefing me on is whether element
21 three is required in document or tangible item cases or if it is only
22 an added element for cases involving intangible information.

1 If I rule for the government on that issue, essentially,
2 the only element the government would have to present additional
3 evidence to prove after your plea is element two, that the classified
4 records, memorandum, videos, and files described for each
5 specification was information related to the national defense.

6 Do you understand this?

7 ACC: Yes, Your Honor.

8 MJ: Now, if I rule for the defense, then the government is also
9 going to have to prove element three. If -- and if I rule for the
10 defense and, as a fact-finder, I subsequently find that the -- it's
11 tangible information versus intangible information, both of those
12 would have to occur.

13 All right. Did your defense counsel explain all of this to
14 you?

15 ACC: Yes, ma'am.

16 MJ: Okay. Do you have any questions about this?

17 ACC: No, ma'am.

18 MJ: Do you still want to go forward with your guilty plea, the
19 LIO, lesser included offense of the specifications under 18 United
20 States Code 793(e), except for Specification 11, that you're pleading
21 guilty to?

22 ACC: Yes, Your Honor.

1 MJ: All right. Now, the same is true of your pleas to the
2 lesser included offenses of Specifications 13 and 14 of Charge II.
3 The elements the government would have to prove beyond a reasonable
4 doubt for those specifications and how I would instruct on them are:

5 Charge II, Specifications 13 and 14, fraud and related
6 activities with computers; in Specifications 13 and 14 of Charge II,
7 the accused is charged with the offense of fraud and related activity
8 in connection with computers, in violation of Title 18 United States
9 Code, Section 1030(a)(1) and Article 134, UCMJ. In order to find the
10 accused guilty of this offense, you must be convinced by legal and
11 competent evidence beyond a reasonable doubt:

12 1. That, at or near Contingency Operating Station Hammer,
13 Iraq:

14 Specification 13, between on or about 28 March 2010 and on
15 or about 27 May 2010; in Specification 14, between on or about 15
16 February 2010 and on or about 18 February 2010, the accused knowingly
17 accessed a computer exceeding authorized access on a Secret Internet
18 Protocol Router Network.

19 2. That the accused obtained information that has been
20 determined, by the United States Government, by executive order or
21 statute, to require protection against unauthorized disclosure for
22 reasons of national defense or foreign relations, to wit:
23 Specification 13, more than 75 classified United States Department of

1 State cables; Specification 14, a classified Department of State
2 Cable entitled Reykjavik 13.

3 3. The accused had reason to believe the information
4 obtained could be used to the injury of the United States or the
5 advantage of any foreign nation.

6 4. That the accused communicated, delivered, transmitted
7 or caused to be communicated, delivered, or transmitted the
8 information to a person not authorized to receive it.

9 5. That the accused acted willfully.

10 6. That, under the circumstances, the conduct of the
11 accused was to the prejudice of good order and discipline in the
12 armed forces or was of a nature to bring discredit upon the armed
13 forces.

14 The same definitions for "prejudice to good order and
15 discipline in the armed forces" and "of a nature to bring discredit
16 upon the armed forces" that I read for you in Specification -- for
17 the specifications of 18 United States Code 793(e) also apply to this
18 offense.

19 An act is done "willfully: if it is done voluntarily and
20 intentionally with a specific intent to do something the law forbids,
21 that is, with a bad purpose to disobey or disregard the law.

1 An act is done "knowingly" if it is done voluntarily and
2 intelligently -- intentionally and not because of a mistake or
3 accident or other innocent reason.

4 The term "computer" means an electronic magnetic, optical,
5 electro-chemical or other high-speed data processing device
6 performing logical arithmetic or storage functions and includes any
7 data storage facility or communications facility directly related to
8 or operating in conjunction with such device, but such term does not
9 include an automated typewriter or typesetter, a portable handheld
10 calculator, or other similar device.

11 The term "exceeds authorized access" means that the accused
12 accessed a computer with authorization and used such access to obtain
13 or alter information in the computer that the accused is not entitled
14 to so obtain or alter. It is the knowing use of the computer by
15 exceeding authorized access which is being proscribed, not the
16 unauthorized possession of, access to, or control over the protected
17 information, itself.

18 "Reason to believe" means the accused knew facts from which
19 he concluded or reasonably should have concluded that the information
20 could be used for the prohibited purposes. In considering whether
21 the accused had reason to believe the information could be used to
22 the injury of the United States or the advantage of any foreign
23 country, you may consider the nature of the information involved.

1 You need not determine that the accused had reason to believe that
2 the information would be used against the United States, only that it
3 could be used.

4 Additionally, the likelihood of the information being used
5 to the injury of the United States or the advantage of any foreign
6 nation must not be too remote, hypothetical, speculative, far-
7 fetched, or fanciful.

8 The government is not required to prove that the
9 information obtained by the accused was, in fact, used to the injury
10 of the United States or the advantage of any foreign nation.

11 The government does not have to prove that the accused had
12 reason to believe exact could both injured the United States and be
13 to the advantage of any foreign country; the statute reads in the
14 alternative. Also, the country is advantage to information could be
15 used need not necessarily be an enemy of the United States; the
16 statute does not distinguish between friend and enemy.

17 In determining whether the person who received the
18 information was entitled to receive it, you may consider all the
19 evidence introduced at trial including any evidence concerning the
20 classification status of the information; any evidence relating to
21 law and regulations governing the classification and declassification
22 of the national security information; it's handling, use, and
23 distribution; as well as any evidence relating to the regulations

1 governing the handling, use, and distribution of information obtained
2 from classification systems.

3 The term "person" means any individual, firm, corporation,
4 education institution, financial institution, government entity, or
5 legal or other entity.

6 I have taken judicial notice that Title 18, United States
7 Code, Section 1030(a)(1) was in existence on the date alleged in the
8 specification.

9 Now, once again, you are pleading guilty to lesser included
10 offenses of Specifications 13 and 14 of Charge II by exceptions and
11 substitutions. Your guilty plea admits to the following elements:

12 Element one, your plea admits that you knowingly accessed a
13 Secret Internet Protocol Router Network computer. The government
14 still has to prove, if they go forward with the greater offense, that
15 you exceeded authorized access. So, element one is kind of
16 bifurcated; you're admitting part of it and the government still has
17 to prove part of it.

18 Element two, that you admitted -- that you obtained
19 information that has been determined by the United States government,
20 by executive order or statute, to require protection against
21 unauthorized disclosure for reasons of national defense or foreign
22 relations, to wit: More than 75 classified United States Department

1 of State cables, for Specification 13; and, for Specification 14, a
2 classified Department of State Cable entitled Reykjavik 13.

3 Okay. Element four, that you're also admitting that you
4 willfully communicated the above material to a person not entitled to
5 receive it. That would be element five, excuse me.

6 And element six, that, under the circumstances, your
7 conduct was to the prejudice of good order and discipline in the
8 armed forces or of a nature to bring discredit upon the armed forces.

9 Now, there are two elements and one element in part that
10 the government would have to prove beyond a reasonable doubt to find
11 you guilty of the greater offense in violation of 18 United States
12 Code, Section 1030(a)(1). Those elements are:

13 Partial element one, the government would have to prove
14 that you knowingly exceeded authorized access.

15 Element three, that you had reason to believe the
16 information obtained could be used to the injury of the United States
17 or the advantage of any foreign nation.

18 And element six, at the time, 18 United States Code,
19 Section 1030(a)(1) was in existence on the dates alleged in the
20 specifications.

21 Now, once again, with respect to element six, I've taken
22 judicial notice of the statute so the government doesn't have to

1 present any further proof to establish its existence. That leaves
2 partial element one and element three.

3 Do you understand this?

4 ACC: Yes, Your Honor.

5 MJ: Did your defense counsel explain this to you?

6 ACC: Yes, Your Honor.

7 MJ: Do you have any question about this?

8 ACC: No, Your Honor.

9 MJ: Do you still want to go forward with your plea with respect
10 to the lesser included offense of 18 United States Code, Section
11 1030(a)(1) that you're pleading guilty to?

12 ACC: Yes, ma'am.

13 MJ: All right. Finally, I want you to understand how your
14 guilty plea will work if the government decides to go forward with
15 the greater offense. If I find your pleas provident, I'm not making
16 any findings today. The government would -- if the government
17 decides to go forward with the greater offenses, the government would
18 present their evidence in the merits portion of the case. As I said
19 before, I can't use anything you tell me during the providence
20 inquiry; everything that the government presents is going to have --
21 they're going to have to present without that evidence at the merits
22 portion of the trial and I would have two possible findings regarding
23 the specifications that -- where you've entered guilty pleas: guilty

1 to the lesser included offense, pursuant to your plea, or guilty of
2 the greater offense if proved by the government. There would be no
3 possibility for me to find you not guilty, based on your plea.

4 Do you understand that?

5 ACC: Yes, Your Honor.

6 MJ: Do you have any questions about any of that I just
7 discussed with you?

8 ACC: No, ma'am.

9 MJ: Okay. Do you still want to plead guilty?

10 ACC: Yes, Your Honor.

11 MJ: All right. PFC Manning, your plea of guilty -- your
12 counsel has entered a plea of guilty to lesser included offenses by
13 exceptions and substitutions for several of the charges and
14 specifications. Your plea of guilty will not be accepted unless you
15 understand its full meaning and effect. I'm going to discuss your
16 guilty plea with you. You may wish to consult with your defense
17 counsel at any time before answering any of my questions. If you
18 have any questions of me, feel free to ask them.

19 A plea of guilty is the equivalent to a conviction and is
20 the strongest form of proof known to the law. On your plea alone,
21 without receiving any evidence, this court can find you guilty of the
22 offenses for which you've pled guilty. Your plea will not be
23 accepted unless you realize that, by your plea, you admit every act

1 or omission and every element of the offenses to which you've pled
2 guilty and that you are pleading guilty because you are, actually, in
3 fact, guilty. If you do not believe that you are guilty, then you
4 should not, for any reason, plead guilty.

5 Do you understand what I've said so far?

6 ACC: Yes, Your Honor.

7 MJ: By your plea of guilty, you give up three important right
8 of the you give up these rights solely with respect to the offenses
9 for which you've pled guilty.

10 First, the right against self-incrimination, that is,
11 you're right to say nothing at all.

12 Second, the right to a trial of the facts by this court,
13 that is, you're right to have this court-martial decide whether you
14 are guilty or not guilty based upon evidence the prosecution would
15 present and on any evidence you might introduce.

16 And, third, the right to be confronted by and to cross-
17 examine any witnesses called against you.

18 Do you have any questions about any of these rights?

19 ACC: No, Your Honor.

20 MJ: And do you understand that, by pleading guilty, you no
21 longer have these rights with respect to the offenses to which you've
22 pled guilty?

23 ACC: Yes, Your Honor.

1 MJ: If you continue with your guilty plea, you'll be placed
2 under oath and I will question you to determine whether you are, in
3 fact, guilty. Anything you tell me may be used against you in the
4 sentencing portion of the trial.

5 Do you understand that?

6 ACC: Yes, Your Honor.

7 MJ: If you tell me anything that's not true, your statements
8 may be used against you later for charges of perjury or making false
9 statements.

10 Do you understand that?

11 ACC: Yes, ma'am.

12 MJ: Now, your plea of guilty, as we just discussed, to a lesser
13 included offense may also be used to establish certain elements of
14 the charged offense if the government decides to proceed on the
15 charged offense.

16 Do you understand that?

17 ACC: Yes, Your Honor.

18 MJ: Trial Counsel, please place PFC Manning under oath.

19 **[The accused was sworn.]**

20 MJ: All right. Is there stipulation of fact in this case?

21 CDC[MR.COOMBS]: There is not, Your Honor.

22 TC[MAJ FEIN]: No, Your Honor.

1 MJ: All right. Defense, I understand that this is a plea
2 without a plea agreement or a stipulation of fact between the
3 parties. Is that correct?

4 CDC[MR.COOMBS]: That is correct, Your Honor.

5 MJ: All right. And I understand PFC Manning has prepared a
6 statement to orient the Court to the facts that has been marked as an
7 Appellate Exhibit, is that correct?

8 CDC[MR.COOMBS]: It is, Your Honor, Appellate Exhibit 498.

9 MJ: May I see Appellate Exhibit 498, please?

10 CDC[MR.COOMBS]: Actually, I stand corrected, Your Honor;
11 Appellate Exhibit 499.

12 MJ: [Receiving AE 499 from the court reporter.] All right. I
13 have before me what's been marked as Appellate Exhibit 499. PFC
14 Manning, do you have a copy of the statement in front of you?

15 ACC: Yes, Your Honor.

16 CDC[MR.COOMBS]: Your Honor, before we go into Appellate Exhibit
17 499, would it be possible for a 10-minute comfort break?

18 MJ: Certainly. Let me -- we'll take it in just a minute, here.
19 PFC Manning, I'm looking at Appellate Exhibit 499. Do you want me to
20 use this statement when we go through our providence inquiry to
21 orient me to the facts of what you're pleading guilty to?

22 ACC: Yes, Your Honor.

1 MJ: All right. Now, did you read this document thoroughly
2 before you gave it to the Court to use for the purpose of your
3 providence inquiry?

4 ACC: Yes, Your Honor.

5 MJ: And do you understand that nobody -- you're pleading, in
6 what we call in military parlance, a "naked plea," which means
7 there's no stipulation of fact, there's nothing to orient the Court
8 to the facts of what you're pleading guilty to. But that doesn't
9 mean that you have to provide a statement to the Court. I mean, we
10 could just go and you could explain to me what the facts were. You
11 don't -- nobody who pleads guilty without a stipulation of fact has
12 to provide a voluntary statement to the Court.

13 Are you providing this statement voluntarily?

14 ACC: Yes, ma'am, I am.

15 MJ: Now, PFC Manning, do you remember when I told you that if
16 you told me anything that's not true, your statements could be used
17 against you later for charges of perjury or making false statements?

18 ACC: Yes, Your Honor.

19 MJ: Now, that's also true with respect to this statement, here,
20 if you decide to read it as part of your providence inquiry. Now,
21 your defense counsel has advised me that that's what you want to do,
22 is that correct?

23 ACC: Yes, Your Honor.

1 MJ: Now, you do understand if you do read the statement and you
2 tell me something that's not true, that the statement can be used
3 against you later for charges of perjury or making false statements?

4 ACC: Yes, Your Honor.

5 MJ: Your counsel has asked for a brief recess. What we're
6 going to do is we'll take that brief recess, we'll come back, you can
7 read your statement, and then we'll go over -- I'll be oriented to
8 the facts, we'll go over each of the specifications that you're
9 pleading guilty to at that time.

10 How long would you like for a recess?

11 CDC[MR.COOMBS]: Just 10 minutes, Your Honor.

12 MJ: All right.

13 TC[MAJ FEIN]: Ma'am, if we can just make it 15 because of the
14 number of spectators?

15 MJ: Why don't we just do that? We'll just reconvene here at 11
16 o'clock. Court is in recess.

17 **[The Article 39(a) session recess at 1050, 28 February 2013.]**

18 **[The Article 39(a) session was called to order at 1109, 28 February**
19 **2013.]**

20 MJ: This Article 39(a) session is called to order. Let the
21 record reflect all parties present when the court last recessed are
22 again present in court. PFC Manning, you may read your statement.

1 ACC: Yes, Your Honor. I wrote this statement in confinement, so
2 I'll start now. The following facts are provided in support of the
3 providence inquiry for my court-martial, United States v. PFC Bradley
4 E. Manning.

5 Personal facts: I'm a 25 year-old Private First Class in
6 the United States Army currently assigned to Headquarters and
7 Headquarters Company (HHC), U.S. Army Garrison (USAG), Joint Base
8 Myer-Henderson Hall, Fort Myer, Virginia. Prior to this assignment,
9 I was assigned to HHC, 2nd Brigade Combat Team, 10th Mountain
10 Division at Fort Drum, New York. My Primary Military Occupational
11 Specialty or PMOS is 35F, Intelligence Analyst. I entered active
12 duty status on 2 October 2007. I enlisted with the hope of obtaining
13 both real-world experience and earning benefits under the G.I. Bill
14 for college opportunities.

15 Facts regarding my position as an intelligence analyst: In
16 order to enlist in the Army, I took the Standard Armed Services
17 Aptitude Battery or ASVAB. My score on this battery was high enough
18 for me to qualify for any enlisted MOS position. My recruiter
19 informed me that I should select an MOS that complemented my
20 interests outside the military. In response, I told him that I was
21 interested in geopolitical matters and information technology. He
22 suggested that I consider becoming an intelligence analyst.

1 After researching the intelligence analyst position, I
2 agreed that this would be a good fit for me. In particular, I
3 enjoyed the fact that an analyst would use information derived from a
4 variety of sources to create work products that informed the command
5 of its available choices for determining the best course of action or
6 COAs. Although the MOS required a working knowledge of computers, it
7 primarily required me to consider how raw information could be
8 combined with other available intelligence sources in order to create
9 products that assist in the command and its situational awareness or
10 SA.

11 I assessed that my natural interest in geopolitical affairs
12 and my computer skills would make me an excellent intelligence
13 analyst. After enlisting, I reported to the Fort Meade Military
14 Entrance Processing Station on 1 October 2007. I then traveled to
15 and reported at Fort Leonard Wood, Missouri on 2 October 2007 to
16 begin Basic Combat Training or BCT.

17 Once at Fort Leonard Wood, I quickly realized that I was
18 neither physically nor mentally prepared for the requirements of
19 basic training. My BCT experience lasted 6 months instead of the
20 normal 10 weeks. Due to medical issues, I was placed on a hold
21 status. A physical examination indicated that I sustained injuries
22 to my right shoulder and left foot. Due to those injuries, I was
23 unable to continue Basic. During medical hold, I was informed that I

1 may be out processed from the Army, however, I resisted being
2 chaptered out because I felt I could overcome my medical issues and
3 continue to serve.

4 On 20 January 2008, I returned to Basic Combat Training.
5 This time, I was better prepared and I completed training on 2 April
6 2008. I then reported for the MOS-specific Advanced Individual
7 Training or AIT on 7 April 2008.

8 AIT was an enjoyable experience for me. Unlike Basic
9 Training where I felt different from the other Soldiers, I fit in and
10 did well. I preferred the mental challenges of reviewing a large
11 amount of information from various sources and trying to create
12 useful or actionable products. I especially enjoyed the practice of
13 analysis through the use of computer applications and methods I was
14 familiar with.

15 I graduated from AIT on 16 August 2008 and reported to my
16 first duty station, Fort Drum, New York on 28 August 2008. As an
17 analyst, Significant Activities or SIGACTs were a frequent source of
18 information for me to use in creating work products.

19 I started working extensively with SIGACTS early after my
20 arrival at Fort Drum. My computer background allowed me to use the
21 tools organic to the Distributed Common Ground System-Army or DCGS-A
22 computers to create polished work products for the 2nd Brigade Combat
23 Team chain of command.

1 The noncommissioned officer in charge, or NCOIC, of the S-2
2 section, then Master Sergeant David P. Adkins, recognized my skills
3 and potential and tasked me to work on a tool abandoned by a
4 previously assigned analyst, the incident tracker. The incident
5 tracker was viewed as a backup to the Combined Information Data
6 Network Exchange or CIDNE and as a unit historical reference tool.

7 In the months preceding my upcoming deployment, I worked on
8 creating a new version of the incident tracker and used SIGACTS to
9 populate it. The SIGACTs I used were from Afghanistan because, at
10 the time, our unit was scheduled to deploy to the Logar and Wardak
11 Provinces of Afghanistan. Later, our unit was reassigned to deploy
12 to Eastern Baghdad, Iraq. At that point, I removed the Afghanistan
13 SIGACTs switch to Iraq SIGACTs.

14 As an analyst, I viewed the SIGACTs as historical data. I
15 believe this view is shared by other all-source analysts as well.
16 SIGACTs give a first-look impression of a specific or isolated event.
17 This event can be an Improvised Explosive Device attack, or IED;
18 Small Arms Fire engagement, or SAF; engagement with a hostile force
19 or any other event a specific unit documented and reported in real
20 time. In my perspective, the information contained within a single
21 SIGACT or group of SIGACTs is not very sensitive. The events
22 encapsulated within most SIGACTs involve either enemy engagements or
23 casualties. Most of this information is publicly reported by the

1 public affairs office or PAO, embedded media pools, or host nation
2 (HN) media.

3 As I started working with SIGACTs, I felt they were similar
4 to a daily journal or log that a person may keep. They capture what
5 happens on a particular date and time. They are created immediately
6 after the events and are potentially updated over a period of hours
7 until a final version is published on the CIDNE -- on the Combined
8 Information Data Network Exchange. Each unit has its own Standard
9 Operating Procedure or SOP for reporting and recording SIGACTs. The
10 SOP may differ between reporting in a particular deployment and
11 reporting in garrison. In garrison, a SIGACT normally involves
12 personnel issues such as driving under the influence or DUI incidents
13 or an automobile involving the death or serious injury of a Soldier.
14 The report starts at the company level and goes up to the battalion,
15 brigade, and even up to the division level.

16 In a deployed environment, a unit may observe or
17 participate in an event and a platoon leader or platoon sergeant may
18 report the event to a SIGACT -- as a SIGACT to the company
19 headquarters through the Radio Transmission Operator or RTO. The
20 commander or RTO will then forward the report to the battalion battle
21 captain or battle noncommissioned officer or NCO. Once the battalion
22 battle captain or battle NCO receives the report, they will either,
23 one, notify the battalion operations officer or S-3, two, conduct an

1 action such as launching the quick reaction force or, three, record
2 the event and report -- and further report it up the chain of command
3 to the brigade. The recording of each event is done by radio or over
4 the Secret Internet Protocol Router Network or SIPRNET, normally by
5 an assigned Soldier, usually junior-enlisted, E4 and below. Once the
6 SIGACT is reported, the SIGACT is further sent up the chain of
7 command. At each level, additional information can either be added
8 or corrected as needed. Normally, within 24 to 48 hours, the
9 updating or recording of a particular SIGACT is complete.
10 Eventually, all reports and SIGACTs go through the chain of command
11 from brigade to division and division to corps. At corps level, the
12 SIGACT is finalized and published.

13 The CIDNE system contains a database that is used by
14 thousands of Department of Defense (DoD) personnel, including
15 Soldiers, civilians, and contractor support. It was the United
16 States Central Command or CENTCOM reporting tool for operational
17 reporting in Iraq and Afghanistan. Two separate but similar
18 databases were maintained for each theater: CIDNE-I for Iraq and
19 CIDNE-A for Afghanistan. Each database encompasses over 100 types of
20 reports and other historical information for access. They contain
21 millions of vetted and finalized records including operational
22 intelligence reporting. CIDNE was created to collect and analyze
23 battle space data to provide daily operational and Intelligence

1 Community (IC) reporting relevant to a commander's daily decision-
2 making process. The CIDNE-I and CIDNE-A databases contain reporting
3 and analysis fields from multiple disciplines including Human
4 Intelligence or HUMINT Reports, Psychological Operations or PYSOP
5 reports, engagement reports, Counter-Improvised Explosion Device or
6 CIED reports, SIGACT reports, targeting reports, social and cultural
7 reports, civil affairs reports, and human terrain reporting.

8 As an intelligence analyst, I had unlimited access to the
9 CIDNE-I and CIDNE-A databases and the information contained within
10 them. Although each table within the database is important, I
11 primarily dealt with HUMINT reports, SIGACT reports, and Counter-IED
12 reports because these reports were used to create the work product I
13 was required to publish as any analyst.

14 When working on an assignment, I looked anywhere and
15 everywhere for information. As an all-source analyst, this was
16 something that was expected. The DCGS-A systems had databases built
17 in and I utilized them on any daily basis. This includes the search
18 tools available on DCGS-A systems on SIPRNET such as Query Tree, and
19 the DOD and Intelink search engines. Primarily, I utilized the CIDNE
20 database using the historical and HUMINT reporting to conduct my
21 analysis and provide back-up for my end work product. I did
22 statistical analysis on historical data including SIGACTs to backup
23 analyses that were based on HUMINT reporting and produced charts,

1 graphs, and tables. I also created maps and charts to conduct
2 predictive analysis based on statistical trends. The SIGACT
3 reporting provided a reference point for what occurred and provided
4 myself and other analysts with the information to conclude possible
5 outcomes.

6 Although SIGACT reporting is sensitive at the time of their
7 creation, their sensitivity normally dissipates within 48 to 72 hours
8 as the information is either publicly released, the unit involved is
9 no longer in the area and not in danger -- or the unit involved is no
10 longer in the area and not in danger. It is my understanding that
11 the SIGACT reports remain classified only because they are maintained
12 within CIDNE because it is only accessible on SIPRNET. Everything on
13 CIDNE-I and CIDNE-A, to include SIGACT reporting, was treated as
14 classified information.

15 Facts regarding the storage of SIGACT reports. As part of
16 my training at Fort Drum, I was instructed to ensure that I create
17 backups of my work product. The need to create backups was
18 particularly acute given the relative instability and reliability of
19 the computer systems we used in the field during the deployment.
20 These computer systems included both organic and theater-provided
21 equipment (TPE) DCGS-A machines.

22 The organic DCGS-A machines we brought with us into the
23 field on our deployment were Dell M90 laptops and the TPE DCGS-A

1 machines were Alienware brand laptops. The M90 DCGS-A laptops were
2 the preferred machine to use as they were slightly faster and had
3 fewer problems with dust and temperature than the theater-provided
4 Alienware laptops. I used several DCGS-A machines during the
5 deployment due to various technical problems with laptops.

6 With these issues, several analysts lost information, but I
7 never lost information due to the multiple backups I created. I
8 attempted to backup as much relevant information as possible. I
9 would save the information so that I, or another analyst, could
10 quickly access it whenever a machine crashed, SIPRNET connectivity
11 was down, or I forgot where the data was stored. When backing up
12 information, I would do one or all of the following things based on
13 my training:

14 Physical backup. I tried to keep physical backup copies of
15 information on paper so that the information could be grabbed
16 quickly. Also, it was easier to brief from hard copies of research
17 in HUMINT reports.

18 Two, local drive backup. I tried to sort out information I
19 deemed relevant and keep complete copies of the information on each
20 of the computers I used in the Temporary Sensitive Compartmentalized
21 -- Compartmented Information Facility, or T-SCIF, including my
22 primary and secondary DCGS-A machines. This was stored under my user
23 profile on the desktop.

1 Share drive -- or share drive backup. Each analyst had
2 access to a T-drive -- what we called a "T-drive" -- shared across
3 the SIPRNET. It allowed others to access information that was stored
4 on it; S-6 operated the T-drive.

5 Compact Disc-Rewritable or CD-RW back up. For larger data
6 sets, I saved the information onto a re-writable disc, labeled the
7 discs, and stored them in the conference room of the T-SCIF. This
8 redundancy permitted us the ability to not worry about information
9 loss. If a system crashed, I could easily pull the information from
10 a secondary computer, the T-drive, or one of the CD-RWs. If another
11 analyst wanted to access my data but I was unavailable, she could
12 find my published products directory on the T-drive or on the CD-RWs.
13 I sorted all of my products and research by date, time, and group and
14 updated the information on each of the storage methods to ensure that
15 the latest information was available to them.

16 During the deployment, I had several of the DCGS-A machines
17 crash on me. Whenever a computer crashed, I usually lost information
18 but the redundancy method ensured my ability to quickly restore old
19 backup data and add my current information to the machine when it was
20 repaired or replaced.

21 I stored the backup CD-RWs of larger data sets in the
22 conference room of the T-SCIF or next my workstations. I marked the
23 CD-RWs based on the classification level and its content.

1 Unclassified CD-RWs were only labeled with content type and not
2 marked with classification markings. Early on in the deployment, I
3 only saved and stored the SIGACTs that were within or near our
4 operational environment. Later, I thought it would be easier just to
5 save all the SIGACTs on to a CD-RW. The process would not take very
6 long to complete and so I downloaded the SIGACTs from CIDNE-I onto a
7 -- onto a DCGS-on to a CD-RW. After finishing with CIDNE-I, I did
8 the same with CIDNE-A. By retrieving the CIDNE-I and CIDNE-A
9 SIGACTs, I was able to retrieve the information whenever I needed it
10 and not rely upon the unreliable and slow SIPRNET connectivity needed
11 to pull them. Instead, I could just find the CD-RW and open the pre-
12 loaded spreadsheet. This process began in late December 2009 and
13 continued through early January 2010. I could quickly export one
14 month of the SIGACT data at a time and download in the background as
15 I did other tasks. The process took approximately a week for each
16 table.

17 After downloading the SIGACT tables, I periodically updated
18 them by pulling only the most recent SIGACTs and simply copying them
19 and pasting them into the database saved on the CD-RW. I never hid
20 the fact that I had downloaded copies of both the SIGACT tables from
21 CIDNE-I and CIDNE-A. They were stored on appropriately labeled and
22 marked CD-RWs, stored in the open. I viewed the saved copies of the
23 CIDNE-I and CIDNE-A SIGACT tables as being both for my use and the

1 use of anyone within S-2 section during the SIPRNET connectivity
2 issues.

3 In addition to the SIGACT tables, I had a large repository
4 of HUMINT reports and counter-IED reports downloaded from CIDNE-I.
5 These contained reports that were relevant to the area in and around
6 our operational environment in Eastern Baghdad and the Diyala
7 Province of Iraq.

8 In order to compress the data to fit onto a CD-RW, I use a
9 compression algorithm called "BZIP2." The program used to compress
10 the data is called "WinRar." WinRar is an application that is free
11 and can be easily downloaded from the internet via the Nonsecure
12 Internet Relay Protocol Network, or NIPRNET. I downloaded WinRar on
13 NIPRNET and transferred it to the DCGS-A machine user profile desktop
14 using the CD-RW. I did not try to hide the fact that I was
15 downloading WinRar onto my SIPRNET DCGS-A machine or computer. With
16 the assistance of the BZIP2 compression algorithm, using the WinRar
17 program, I was able to fit all the SIGACTs onto a single CD-RW and
18 the relevant HUMINT and Counter-IED reports onto a separate CD-RW.

19 Facts regarding my knowledge of the WikiLeaks Organization
20 or WLO: I first became vaguely aware of the WLO during my AIT at
21 Fort Huachuca, Arizona, though I did not fully pay attention until
22 WLO -- until the WLO released purported Short Messaging System or SMS
23 messages from 11 September 2001 on 25 November 2009. At that time,

1 references to the release and the WLO website showed up in my daily
2 Google News open-source search for information related to U.S.
3 foreign policy. The stories were about how WLO published
4 approximately 500,000 messages. I then reviewed the messages myself
5 and realized that the posted messages were very likely real, given
6 the sheer volume and detail of the content.

7 After this, I began conducting research on WLO. I
8 conducted searches on both NIPRNET and SIPRNET on WLO beginning in
9 late November 2009 and early 2000 -- early December 2009. At this
10 time, I also began to routinely monitor the WLO website. In response
11 to one of my searches in December 2009, I found the United States
12 Army Counterintelligence Center or USACIC report on the WikiLeaks
13 Organization. After reviewing the report, I believe that this report
14 was one of the -- was possibly the one that my AIT instructor
15 referenced in early 2008. I may or may not have saved the report on
16 my DCGS-A workstation. I know I reviewed the document on other
17 occasions throughout early 2010 and saved it on both my primary and
18 secondary laptops.

19 After reviewing the report, I continued doing research on
20 WLO, however, based upon my open-source collection, I discovered
21 information that contradicted the 2008 USACIC report including
22 information indicating that, similar to other press agencies, WLO
23 seemed to be dedicated to exposing illegal activities and corruption.

1 WLO received numerous awards and recognition for its reporting
2 activities.

3 Also, in reviewing the WLO website, I found information
4 regarding U.S. military SOPs for Camp Delta at Guantánamo Bay, Cuba
5 and information on the, then, outdated rules of engagement or ROE in
6 Iraq for cross-border pursuits of former members of Saddam Hussein's
7 al-Tikriti's government.

8 After seeing the information available on the WLO website,
9 I continued following it and collecting open-source information from
10 it. During this time period, I followed several organizations and
11 groups including wire press agencies such as the Associated Press and
12 Reuters and private intelligence agencies including Strategic
13 Forecasting or STRATFOR. This practice was something I was trained
14 to do during AIT and was something that good analysts are expected to
15 do.

16 During the searches of WLO, I found several pieces of
17 information that I found useful in my work product -- in my work as
18 an analyst, specifically, I recall WLO publishing documents related
19 to weapons trafficking between two nations that affected my OE. I
20 integrated this information into one or more of my work products. In
21 addition to visiting the WLO website, I began following WLO using and
22 Instant Relay Chat or IRC client called "XChat" sometime in early
23 January 2010.

1 IRC is a protocol for real-time Internet communications by
2 messaging and conferencing, colloquially referred to as chat rooms or
3 chats. The IRC chat rooms are designed for group communication
4 discussion forums. Each IRC chat room is called a channel. Similar
5 to a television, you can tune in or follow it -- follow a channel so
6 long as it is open and does not require an invite. Once joining a
7 specific IRC conversation, other users in the conversation can see
8 that you have joined the room. On the Internet, there are millions
9 of different IRC channels across several services. Channel topics
10 span a range of topics covering all kinds of interests and hobbies.

11 The primary reason for following WLO on IRC was curiosity,
12 particularly in regards to how and why they obtained the SMS messages
13 referenced above. I believed that -- I believed that collecting
14 information on the WLO would assist me in this goal.

15 Initially, I simply observed the IRC conversations. I
16 wanted to know how the organization was structured and how they
17 obtained their data. The conversations I viewed were usually
18 technical in nature, but sometimes switched to a lively debate on
19 issues a particular individual may have felt strongly about.

20 Over a period of time, I became more involved in these
21 discussions, especially when conversations turned to geopolitical
22 events and information topics -- information technology topics such

1 as networking and encryption methods. Based on these observations, I
2 would describe the WL organization as almost academic in nature.

3 In addition to the WLO conversations, I participated in
4 numerous other IRC channels across at least three different networks.
5 The other IRC channels I participated in normally dealt with
6 technical topics including the LINUX and Berkley Security
7 Distribution (BSD) operating systems or OSs, networking, encryption
8 algorithms and techniques, and other more political topics such as
9 politics and queer rights.

10 I normally engaged in multiple IRC conversations
11 simultaneously; mostly publicly but often privately. The XChat
12 client enabled me to manage these multiple conversations across
13 different channels and servers. The screen for XChat was often busy,
14 but experience enabled me to see when something was interesting. I
15 would then select conversation and either observe or participate.

16 I really enjoyed the IRC conversations pertaining to and
17 involving the WLO. However, at some point in late February or early
18 March of 2010, the WLO IRC channel was no longer accessible.
19 Instead, the regular participants of this channel switched to using a
20 Jabber server.

21 Jabber is another Internet communication tool similar, but
22 more sophisticated than IRC. The IRC and Jabber conversations

1 allowed me to feel connected to others, even when alone. They helped
2 me pass the time and keep motivated throughout the deployment.

3 Facts regarding the unauthorized storage and disclosure of
4 the SIGACTs: As indicated above, I created copies of the CIDNE-I and
5 CIDNE-A SIGACT tables as part of the process of backing up
6 information. At the time I did so, I did not intend to use this
7 information for any purpose other than for backup. However, I later
8 decided to release this information publicly. At that time, I
9 believed and still believe that these tables are two of the most
10 significant documents of our time.

11 On 8 January 2010, I collected the CD-RW I stored in the
12 conference room of the T-SCIF and placed into the cargo pocket of my
13 ACU or Army Combat Uniform. At the end of my shift, I took the CD-RW
14 out of the T-SCIF and brought it to my Containerized Housing Unit or
15 CHU. I copied the data onto my personal laptop. Later, at the
16 beginning of my shift, I returned to -- I returned the CD-RW back to
17 the conference room of the T-SCIF.

18 At the time I saved the SIGACTs to my laptop, I planned to
19 take them -- I planned to take them with me on mid-tour leave and
20 decide what to do with them. At some point prior to my mid-tour
21 leave, I transferred the information from my computer to a Secure
22 Digital memory card for my digital camera. The SD card for the

1 camera also worked on my computer and allowed me to store the SIGACT
2 tables in a secure manner for transport.

3 I began mid-tour leave on 23 January 2010, flying from
4 Atlanta, Georgia to Reagan National Airport in Virginia. I arrived
5 at the home of my aunt, Debra M. Van Alstyne in Potomac, Maryland and
6 quickly got in contact with my then boyfriend, Tyler R. Watkins.

7 Tyler, then a student at Brandeis University in Waltham,
8 Massachusetts, and I made plans to -- for me to visit him in Boston,
9 Massachusetts area. I was excited to see Tyler and planned on
10 talking to Tyler about where our relationship was going and about my
11 time in Iraq. However, when arrived in the Boston area, Tyler and I
12 seem to become distant. He did not seem very excited about my return
13 from Iraq. I tried talking to him about our relationship, but he
14 refused to make any plans. I also tried raising the topic of
15 releasing the CIDNE-I and CIDNE-A SIGACT tables to the public.

16 I asked Tyler hypothetical questions about what he would do
17 if he had documents that he thought the public needed -- that the
18 public needed access to. Tyler didn't really have a specific answer
19 for me. He tried to answer the question and be supportive, but
20 seemed confused by the question and its context. I then tried to be
21 more specific, but he asked too many questions. Rather than try to
22 explain my dilemma, I decided just to drop the conversation. After a
23 few days in Waltham, I began feeling that I was overstaying my

1 welcome and I returned to Maryland. I spent the remainder of my time
2 on leave in the Washington, D.C. area.

3 During this time, a blizzard bombarded the Mid-Atlantic and
4 I spent a significant time period of time, essentially, stuck at my
5 aunt's house in Maryland. I began to think about what I knew and the
6 information I still had in my possession. For me, the SIGACTs
7 represented the on-the-ground reality of both the conflicts -- both
8 the conflicts in Iraq and Afghanistan. I felt we were risking so
9 much for -- risking so much for people that seemed unwilling to
10 cooperate with us leading to frustration and hatred on both sides.

11 I began to become depressed with the situation that we
12 found ourselves increasingly mired in year after year. The SIGACTs
13 documented this in great detail and provided context to what we were
14 seeing on the ground. In attempting to conduct counterterrorism or
15 CT and counterinsurgency (COIN) operations, we became obsessed with
16 capturing/killing human targets on lists and on being suspicious and
17 avoiding cooperation with our host nation partners and ignoring the
18 second and third order effects of accomplishing short-term goals and
19 missions.

20 I believe that if the general public, especially the
21 American public, had access to the information contained within the
22 CIDNE-I and CIDNE-A tables, this could spark a domestic debate on the
23 role of the military and our foreign policy, in general, as well as

1 it related to Iraq and Afghanistan. I also believe the detailed
2 analysis of the data over a long period of time by different sectors
3 of society might cause society to reevaluate the need or even the
4 desire to engage in counterterrorism and counterinsurgency operations
5 that ignore the complex dynamics of the people living in the affected
6 environment every day.

7 At my aunt's house, I debated what I should do with the
8 SIGACTs; in particular, whether I should hold onto them or disclose
9 them through a press agency. At this point, I decided it made sense
10 to try and disclose the SIGACT tables to an American newspaper. I
11 first called my local newspaper, the *Washington Post*, and spoke with
12 a woman saying that she was a reporter. I asked her if the
13 *Washington Post* would be interested in receiving information that
14 would have enormous value to the American public. Although we spoke
15 for about 5 minutes concerning the general nature of what I
16 possessed, I do not believe she took me seriously. She informed me
17 that the *Washington Post* would possibly be interested, but that such
18 decisions were made only after seeing the information I was referring
19 to and after consideration by the senior editors.

20 I then decided to contact the largest and most popular
21 newspaper, the *New York Times*. I called the public editor number on
22 the *New York Times* website. The phone rang and was answered by a
23 machine. I went through the menu to the section for news tips and

1 was routed to an answering machine. I left a message stating that I
2 had access to information about Iraq and Afghanistan that I believed
3 was very important. However, despite leaving my Skype phone number
4 and personal e-mail address, I never received a reply from the *New*
5 *York Times*.

6 I also briefly considered dropping into the office for the
7 political commentary blog, *Politico*, however, the weather conditions
8 during my leave hampered my efforts to travel. After these failed
9 efforts, I ultimately decided to submit the materials to the WLO. I
10 was not sure if the WLO would actually publish the SIGACT tables or
11 even if they would publish. I was concerned that they might -- I was
12 also concerned that they might not be noticed by the American media.
13 However, based upon what I read about the WLO through my research
14 described above, they seemed to be the best medium for publishing
15 this information to the world within my reach.

16 At my aunt's house, I joined in on an IRC conversation and
17 stated I had information that needed to be shared with the world. I
18 wrote that the information would help document the true costs of the
19 wars in Iraq and Afghanistan. One of individuals in the IRC asked me
20 to describe the information. However, before I could describe
21 information, another individual pointed me to the link for the WLO
22 website's online submission system. After ending my IRC connection,

1 I considered my options one more time. Ultimately, I felt that the
2 right thing to do was to release the SIGACTs.

3 On 3 February 2010, I visited the WLO website on my
4 computer and clicked on the "submit documents" link. Next, I found
5 the "Submit Your Information Online" link and elected to submit the
6 SIGACTs via the Onion Router or TOR (T-O-R) anonymizing network by a
7 special link.

8 TOR is a system intended to provide anonymity online.
9 Software routes Internet traffic through a network of servers and
10 other TOR clients in order to conceal a user's location and identity.
11 I was familiar with TOR and had it previously installed on my
12 computer to anonymously monitor the social media websites and militia
13 groups operating within central Iraq.

14 I follow the prompts and attached the compressed data files
15 of CIDNE-I and CIDNE-A SIGACTs. I attached the text file I drafted
16 while preparing to provide documents to the *Washington Post*. It
17 provided rough guideline saying, "It's already been sanitized of any
18 source-identifying information. You might need to sit on this
19 information, perhaps 90 to 100 days, to figure out how to best
20 release such a large amount of data and to protect the source. This
21 is possibly one of the more significant documents of our time,
22 removing the fog of war and revealing the true nature of 21st-century
23 asymmetric warfare. Have a good day."

1 After sending this, I left the SD card in a camera case at
2 my aunt's house in the event I needed it again in the future.

3 I returned from mid-tour leave on 11 February 2010.

4 Although the information had not yet been publicly -- had not yet
5 been published by the WLO, I felt a sense of relief by them having
6 it. I felt I had accomplished something that allowed me to have a
7 clear conscience based upon what I had seen and read about and knew
8 were happening in both Iraq and Afghanistan every day.

9 Facts regarding the unauthorized storage and disclosure of
10 10 Reykjavik 13. I first became aware of the diplomatic cables
11 during my training period in AIT. I later learned about the
12 Department of State, or DoS, Net-Centric Diplomacy (NCD) portal from
13 the 2/10 Brigade Combat Team S-2, Captain Steven Lim.

14 Captain Lim sent a section-wide e-mail to the other
15 analysts and officers in late December 2009 containing the SIPRNET
16 link to the portal along with the instructions to look at the cables
17 contained within them and to incorporate them into our work product.
18 Shortly after this, I also noticed the diplomatic cables were being
19 referred to in products from the corps level, U.S. Forces Iraq or
20 USF-I. Based upon Captain Lim's direction to become familiar with
21 its contents, I read virtually every published cable concerning Iraq.
22 I also began scanning database and other -- and reading other random
23 cables that piqued my curiosity.

1 It was around this time in early to mid-January 2010 that I
2 began searching the database for information on Iceland. I became
3 interested in Iceland due to the IRC conversations I viewed in the
4 WLO channel discussing an issue called "Icesave." At this time, was
5 not very familiar with the topic, but it seemed to be a big issue for
6 those participating in the conversation. This is when I decided to
7 investigate and conduct a few searches on Iceland and find out more.

8 At the time, did not find anything -- I did not find
9 anything discussing the Icesave issue, either directly or indirectly.
10 I then conducted an open source search for Icesave. I then learned
11 that Iceland was involved in the dispute with the United Kingdom and
12 the Netherlands concerning the financial collapse of one or more of
13 Iceland's banks. According to open source reporting, much of the
14 public controversy involved the United Kingdom's use of anti-
15 terrorism legislation against Iceland in order to freeze Icelandic
16 assets for payments of the guarantees for UK depositors that lost
17 money.

18 Shortly after returning from mid-tour leave, I returned to
19 the Net-Centric Diplomacy portal to search for information on Iceland
20 and Icesave as the topic had not abated on the WLO IRC channel. To
21 my surprise, on 14 February 2010, I found the cable 10 Reykjavik 13
22 which referenced the Icesave issue directly. The cable, published on
23 13 January 2010, was just over two pages in length. I read the cable

1 and quickly concluded that Iceland was, essentially, being bullied,
2 diplomatically, by two larger European powers. It appeared to me
3 that Iceland was out of viable options and was coming to the U.S. for
4 assistance. Despite their quiet request for assistance, it did not
5 appear that we were going to do anything. From my perspective, it
6 appeared that we were not getting involved due to the lack of long-
7 term geopolitical benefit to do so.

8 After digesting the contents of 10 Reykjavik 13, I debated
9 on whether this was something I should send to the WLO. At this
10 point, the WLO had not published nor acknowledged receipt of the
11 CIDNE-I and CIDNE-A SIGACTs tables. Despite not knowing if the
12 SIGACTs were a priority for the WLO, I decided the cable was
13 something that would be important and I felt I might be able to right
14 a wrong by having them publish this document.

15 I burned the document -- or I burned the information onto a
16 CD-RW on 15 February 2010, took it to my CHU, and saved it onto my
17 personal laptop. I navigated to the WLO website via TOR connection,
18 like before, and uploaded the document via the secure form.
19 Amazingly, the WLO published 10 Reykjavik 13 within hours, proving
20 that the form worked and that they must have received the SIGACT
21 tables.

22 Facts regarding the unauthorized disclosure -- unauthorized
23 storage and disclosure of the 12 July 2007 aerial weapons team or AWT

1 video. During the mid-tour -- or mid-February time frame, the 2nd
2 Brigade Combat Team, 10th Mountain Division targeting analyst, then
3 Specialist Jihrleah W. Showman and others discussed a video that Ms.
4 Showman had found on the T-drive. The video depicted several
5 individuals being engaged by an aerial weapons team. At first, I did
6 not consider the video very special as I have viewed the countless
7 other war-tore -- war war-porn type videos depicting combat.
8 However, the recording of audio comments by the aerial weapons team
9 and crew and the second engagement in the video of an unarmed bongo
10 truck troubled me.

11 Ms. Showman and a few other analysts and officers in the T-
12 SCIF commented on the video and debated whether the crew violated the
13 rules of engagement or ROE in the second engagement. I shied away
14 from this debate, instead conducted some research on the event. I
15 wanted to learn about what happened and whether there was any
16 background to the events of the day that the event occurred, 12 July
17 2007.

18 Using Google, I searched for the event by its date and
19 general location. I found several news accounts involving two
20 Reuters employees who were killed during the aerial weapon team's
21 engagement. Another story explained that Reuters had requested for a
22 video -- requested for a copy of the video under the Freedom of
23 Information Act or FOIA. Reuters wanted to view the video in order

1 to be able to understand what had happened and to improve their
2 safety practices in combat zones. A spokesperson for Reuters was
3 quoted saying that the video might help avoid a reoccurrence of the
4 tragedy and believed there was a compelling need for the immediate
5 release of the video.

6 Despite the submission of the FOIA request, the news
7 account explained that CENTCOM replied to Reuters stating that they
8 could not give a timeframe for considering a FOIA request and that
9 the video may no longer -- might no longer exist. Another story I
10 found, written a year later, said that, even though Reuters was still
11 pursuing their request, they still do not receive a formal response
12 or written determination in accordance with FOIA.

13 The fact that neither CENTCOM nor Multi-National Forces,
14 Iraq or MNF-I, would not voluntarily release the video troubled me
15 further. It was clear to me that the event happened because the
16 aerial weapons team mistakenly identified the Reuters employees as a
17 potential threat and that the people in the bongo truck were merely
18 attempting to assist the wounded. The people in the van were not a
19 threat, but were merely good Samaritans.

20 The most alarming aspect of the video, to me, however, was
21 the seemingly delightful bloodlust the aerial weapons -- they
22 appeared to have. They dehumanized the individuals they were
23 engaging and seemed to not value human life by referring to them as

1 "dead bastards" and congratulating each other on the ability to kill
2 in large numbers. At one point in the video, there's an individual
3 on the ground attempting to crawl to safety; the individual is
4 seriously wounded. Instead of calling for medical attention to the
5 location, one of the aerial weapons team crew members verbally asks
6 for the wounded person to pick up a weapon so that he can have a
7 reason to engage. For me, this seems similar to a child torturing
8 ants with a magnifying glass.

9 While saddened by the aerial weapons teams crew -- or the
10 aerial weapon teams crew's lack of concern about human life, I was
11 disturbed by the response the discovery of injured children at the
12 scene. In the video, you can see that the bongo truck driving up to
13 assist the wounded individual. In response, the aerial weapons team
14 crew assumes the individuals are a threat. They repeatedly request
15 for authorization to fire on the bongo truck and, once granted -- and
16 once granted, they engage the vehicle at least six times.

17 Shortly after the second engagement, a mechanized infantry
18 unit arrives at the scene. Within minutes, the aerial weapons team
19 crew learns that the children -- that children were in the van and,
20 despite the injuries, the crew exhibits no remorse. Instead, they
21 downplay the significance of their actions saying, "Well, it's their
22 fault for bringing their kids into a battle." The aerial weapons
23 team crew members sound like they lack sympathy for the children or

1 the parents. Later, in a particularly disturbing manner, the aerial
2 weapons team crew verbalizes enjoyment at the sight of one of the
3 ground vehicles driving over a body -- or one of the bodies.

4 As I continued my research, I found an article discussing a
5 book, *The Good Soldiers*, written by *Washington Post* writer David
6 Finkel. In Mr. Finkel's book, he writes about the aerial weapons
7 team attack. As I read an online excerpt on Google Books, I followed
8 Mr. Finkel's account of the event along with the video. I quickly
9 realized that Mr. Finkel was quoting, I feel, in verbatim, the audio
10 communications of the aerial weapons team crew. It is clear to me
11 that Mr. Finkel obtained access and a copy of the video during his
12 tenure as an embedded journalist.

13 I was aghast at Mr. Finkel's portrayal of the incident.
14 Reading his account, one would believe the engagement was somehow
15 justified as payback for an earlier attack that led to the death of a
16 Soldier.

17 Mr. Finkel -- Mr. Finkel ends his account of the engagement
18 by discussing how a Soldier finds an individual still alive from the
19 attack. He writes that the Soldier finds him and sees him gesture
20 with his two forefingers together, a common method in the Middle East
21 to communicate that they are friendly. However, instead of assisting
22 him, the Soldier makes an obscene gesture extending his middle
23 finger. The individual apparently dies shortly thereafter. Reading

1 this, I can only think of how this person was simply trying to help
2 others and then quickly finds he needs help as well. To make matters
3 worse, in the last moments of his life, he continues to express his
4 friendly -- this -- his friendly intent, only to find himself
5 receiving this well-known gesture of unfriendliness. For me, it's
6 all a big mess and I'm left wondering what these things mean and how
7 it all fits together and it burdens me emotionally.

8 I saved a copy of the video on my workstation. I searched
9 for and found the rules of engagement, the rules of engagement
10 annexes, and a flow chart from the 2007 time period as well as an
11 unclassified rules of engagement smart card from 2006.

12 On 15 February 2010, I burned these documents onto a CD-RW
13 the same time I burned the 10 Reykjavik 13 cable onto a CD-RW. At
14 the time, I placed the video and rules of engagement information onto
15 my personal laptop in my CHU. I planned to keep this information
16 there until I redeployed in summer of 2010. I planned on providing
17 this to the Reuters office in London to assist them in preventing
18 events such as this in the future. However, after the WLO published
19 10 Reykjavik 13, I altered my plans. I decided to provide the video
20 and rules of engagement to them so that the -- so that Reuters would
21 have this information before I redeployed from Iraq.

22 On about 21 February 2010, as described above, I used the
23 WLO submission form and uploaded the documents. The WLO released the

1 video on 5 April 2010. After the release, I was concerned about the
2 impact of the video and how it would be perceived by the general
3 public. I hoped that the video would be -- I hoped that the public
4 would be as alarmed as me about the conduct of the aerial weapons
5 team members. I wanted the American public to know that not everyone
6 in Iraq and Afghanistan were targets that needed to be neutralized,
7 but rather people who were struggling to live in the pressure cooker
8 environment of what we call asymmetric warfare.

9 After the release, I was encouraged by the response in the
10 media and general public who observed the aerial weapons team video.
11 As I hoped, others were just as troubled, if not more troubled than
12 me, by what they saw.

13 At this time, I began seeing reports claiming that the
14 Department of Defense and CENTCOM could not confirm -- cannot confirm
15 the authenticity of the video. Additionally, one of my supervisors,
16 Captain Casey Fulton, stated her belief that the video was not
17 authentic. In her response, I decided to ensure that the
18 authenticity of the video would not be questioned in the future.

19 On 25 February 2010, I emailed Captain Fulton a link to the
20 video that was on our T-drive and a copy of the video published by
21 WLO that was collected by the open source Center so she could compare
22 them herself.

1 Around this time frame, I burned a second CD-RW containing
2 the aerial weapons team video. In order to make it appear authentic,
3 I placed a classification sticker and wrote "Reuters FOIA REQ" on its
4 face. I placed the CD-RW in one of my personal CD cases containing a
5 set of "Starting Out in Arabic" CDs. I planned on mailing the CD-RW
6 to Reuters after I redeployed so that they could have a copy that was
7 unquestionably authentic.

8 Almost immediately after submitting the aerial weapons team
9 video and the rules of engagement documents, I notified the
10 individuals in the WLO IRC to expect an important submission. I
11 received a response from an individual going by the handle of
12 "Office." At first, our conversations were general in nature but
13 over time, as our conversations progressed, I assessed this
14 individual to be an important part of the WLO.

15 Due to the strict adherence of anonymity by the WLO, we
16 never exchanged identifying information. However, I believe the
17 individual was likely Mr. Julian Assange, Mr. Daniel Schmidt, or a
18 proxy representative of Mr. Assange and Schmidt.

19 As the communications transferred from IRC to the Jabber
20 client, I gave "Office" and later "Press Association" the name of
21 Nathaniel Frank in my address book, after the author of -- after the
22 author of a book I read in 2009. After a period of time, I developed
23 what I felt was a friendly relationship with Nathaniel. Our mutual

1 interest in information technology and politics made our
2 conversations enjoyable. We engaged in conversation often, sometimes
3 as long as an hour or more. I often looked forward to my
4 conversations with Nathaniel after work.

5 The anonymity that was provided by TOR, the Jabber client,
6 and the WLO's policy allowed me to feel I could just be myself, free
7 of the concerns of social labeling and perceptions that are often
8 placed upon me in real life. In real life, I lacked a close
9 friendship with the people I worked with in my section, the S-2
10 section, the S-2 sections in subordinate battalions, and the 2nd
11 Brigade Combat Team as a whole. For instance, I lacked close ties to
12 my roommate due to his discomfort regarding my perceived sexual
13 orientation.

14 Over the next few months, I stayed in frequent contact with
15 Nathaniel. We conversed on nearly a daily basis and I felt that we
16 were developing a friendship. The conversations covered many topics
17 and I enjoyed the ability to talk about pretty much anything and not
18 just the publications that the WLO was working on.

19 In retrospect, I realize that these dynamics were
20 artificial and were valued more by myself than Nathaniel. For me,
21 these conversations represented an opportunity to escape from the
22 immense pressures and anxiety that I experienced and built up
23 throughout the deployment. It seems that as I tried harder to fit in

1 at work, the more I seemed to alienate my peers and lose respect,
2 trust, and the support I needed.

3 Facts regarding the unauthorized disclosure -- or
4 unauthorized storage and disclosure of documents related to the
5 detainments by the Iraqi Federal Police or FP and the Detainee
6 Assessment Briefs, and the USACIC -- United States Army
7 Counterintelligence Center report. On 27 February 2010, a report was
8 received -- a report was received from a subordinate battalion. The
9 report described an event in which the Federal Police detained, or
10 FP, detained 15 individuals for printing anti-Iraqi literature.

11 By 2 March 2010, I received instructions from an S-3
12 section officer in the 2nd Brigade Combat Team, 10th Mountain
13 Division Tactical Operations Center or TOC to investigate the matter
14 and figure out who these "bad guys" were and how significant this
15 event was for the Federal Police.

16 Over the course of my research, I found that none of the
17 individuals had previous ties to anti-Iraqi actions or suspected
18 terrorist militia groups. A few hours later, I received several
19 photos from the scene from the subordinate battalion. They were
20 accidentally sent to an officer on a different team than the S-2
21 section and she forwarded them to me. These photos included pictures
22 of the individuals, pallets of unprinted paper, and seized copies of
23 the final printed material -- or printed document and a high-

1 resolution photo of the printed material itself. I printed a blown
2 up copy of the high-resolution photo, I laminated it for ease of use
3 and transfer, I then walked to the TOC, and delivered the laminated
4 copy to our category two interpreter. She reviewed the information
5 and, about a half an hour later, delivered a rough, written
6 transcript in English to the S-2 section. I read the transcript and
7 followed up with her asking her for her take on the contents. She
8 said it was easy for her to transcribe verbatim since I blew up the
9 photograph and laminated it. She said the general nature of the
10 document was benign.

11 The documentation, as I assessed as well, was merely a
12 scholarly critique of the, then, current Iraqi prime minister, Nouri
13 al-Maliki. It detailed corruption with the cabinet of al-Maliki's
14 government and the financial impact of his corruption on the Iraqi
15 people.

16 After discovering this discrepancy between the Federal
17 Police's report and the interpreter's transcript, I forwarded this
18 discovery to the TOC OIC and the Battle NCOIC. The TOC OIC and the
19 overhearing Battle Captain informed me that they didn't want -- or
20 that they didn't need or want to know this information any more.
21 They told me to "drop it" and to just assist them and the Federal
22 Police in finding out where more of these print shops creating "anti-
23 Iraqi literature" might be. I couldn't believe what I heard -- or I

1 couldn't believe what I heard and I returned to the T-SCIF and
2 complained to the other analysts and my section NCOIC about what
3 happened. Some were sympathetic, but none wanted to do anything
4 about it. I'm the type of person who likes to know how things work,
5 and, as an analyst, this means I always want to figure out the truth.
6 Unlike other analysts in my section or other sections within the 2nd
7 Brigade Combat Team, I was not satisfied with just scratching the
8 surface of producing canned or cookie-cutter assessments. I wanted
9 to know why something was the way it was and what we could do to
10 correct or mitigate a situation.

11 I knew that if I continue to assist the Baghdad Federal
12 Police in identifying the political opponents of Prime Minister al-
13 Maliki, those people would be arrested and in the custody of the
14 Special Unit of the Baghdad Federal Police, very likely tortured and
15 not seen again for a very long time, if ever.

16 Instead of assisting the Special Unit of the Baghdad
17 Federal Police, I had decided to take the information and disclose it
18 to the WLO in the hope that, before the upcoming 7 March 2010
19 election, they could generate some immediate press on the issue and
20 prevent this unit of the Federal Police from continuing to crack down
21 on political opponents of al-Maliki.

22 On 4 March 2010, I burned the report, the photos, the high-
23 resolution copy of the pamphlet, and the interpreter's hand-written

1 transcript onto a CD-RW. I took the CD-RW to my CHU and copied the
2 data onto my personal computer. Unlike the times before, instead of
3 uploading the information through the WLO website's submission form,
4 I made a Secure File Transfer Protocol or SFTP connection to a Cloud
5 drop box operated by the WLO. The drop box contained a folder that
6 allowed me to upload directly into it. Saving files into this
7 directory allowed me -- allowed anyone with log in access to the
8 server to view and download them. After downloading these file -- or
9 after uploading these files to the WLO on 5 March 2010, I notified
10 Nathaniel over Jabber.

11 Although sympathetic, he said that the WLO needed more
12 information to confirm the event in order for it to be published or
13 to gain interest in the international media. I attempted to provide
14 these specifics, but, to my disappointment, the WLO website chose not
15 to publish this information. At the same time, I began sifting
16 through information from the U.S. SOUTHCOM -- or U.S. Southern
17 Command or SOUTHCOM and Joint Task Force Guantánamo, Cuba or JTF-
18 GTMO. The thought occurred to me, although unlikely -- that I
19 wouldn't be surprised if the -- although unlikely -- that I wouldn't
20 be surprised if the individuals detained by the Federal Police might
21 be turned over back into U.S. custody and ending up in the custody of
22 Joint Task Force Guantánamo.

1 As I digested -- as I digested through the information on
2 Joint Task Force Guantánamo, I quickly found the Detainee Assessment
3 Briefs or DABs. I previously came across these documents before in
4 2009 but did not think much of them. However, this time, I was more
5 curious during this search and I found them again.

6 The DABs were written in standard DoD memorandum format and
7 addressed the Commander, U.S. SOUTHCOM. Each memorandum gave basic
8 and background information about a specific detainee held, at some
9 point, by Joint Task Force Guantánamo. I have always been interested
10 on the issue of the moral efficacy of our actions surrounding Joint
11 Task Force Guantánamo. On the one hand, I've always understood the
12 need to detain and interrogate individuals who might wish to harm the
13 United States and our allies, however, I felt that there -- that that
14 was -- however, I felt that's what we were doing -- what we were
15 trying to do at Joint Task Force Guantánamo. However, the more I
16 became educated on the topic, it seemed that we found ourselves
17 holding an increasing number of individuals indefinitely that we
18 believed, or knew, to be innocent, low-level foot support -- low-
19 level foot soldiers that we didn't -- that did not have useful
20 intelligence and would be released if they were still in theater --
21 if they were still held in theater.

22 I also recall that, in early 2009, the then newly elected
23 president, Barack Obama, stated that he would close Joint Task Force

1 Guantánamo and that the facility compromised our standing in the
2 world and diminished our "moral authority." After familiarizing
3 myself with the Detainee Assessment Briefs, I agreed. Reading
4 through the Detainee Assessment Briefs, I noticed that they were not
5 analytical products. Instead, they contained summaries of tear-line
6 versions of interim intelligence reports that were old or
7 unclassified. None of the DABs contained names of sources or quotes
8 from a Tactical Interrogation Reports or TIRs. Since the DABs were
9 being sent to the U.S. SOUTHCOM Commander, I assessed that they were
10 intended to provide very general background information on each
11 detainee and not a detailed assessment.

12 In addition to the manner in which DABs were written, I
13 recognized that they were at least several years old and discussed
14 detainees that were already released from Joint Task Force
15 Guantánamo. Based on this, I determined that the DABs were not very
16 important from either an intelligence or national security
17 standpoint.

18 On 7 March 2010, during my Jabber conversations with
19 Nathaniel, I asked him if he thought the DABs were of any use to
20 anyone. Nathaniel indicated, although he didn't -- did not believe
21 that they were of political significance, he did not believe -- he
22 did believe that they could be used to merge into the general,
23 historical account of what occurred at Joint Task Force Guantánamo.

1 He also thought that the DABs might be helpful to a legal counsel of
2 those currently and previously held at JTF-GTMO.

3 After this discussion, I decided to download the DABs. I
4 used an application called Wget to download the DABs. I downloaded
5 Wget off of the NIPRNET laptop in the T-SCIF like other programs. I
6 saved that onto a CD-RW and placed the executable in my My Documents
7 directory of my user profile on the DCGS-A SIPRNET workstation.

8 On 7 March 2010, I took the list of four link -- I took the
9 list of links for the Detainee Assessment Briefs and Wget downloaded
10 them sequentially. I burned the DABs onto a CD-RW and took it into
11 my CHU and copied them to my personal computer.

12 On 8 March 2010, I combined the Detainee Assessment Briefs
13 with the United States Army Counterintelligence Center Report on the
14 -- on the WLO into a compressed zip file. Zip files contain multiple
15 files which are compressed to reduce their size. After creating the
16 zip file, I uploaded the file onto their Cloud drop box via Secure
17 File Transfer Protocol. Once these were uploaded, I notified
18 Nathaniel that the information was in the X directory which had been
19 designated for my use.

20 Earlier that day, I downloaded the USACIC report on WLO.
21 As discussed above, I previously reviewed the report on numerous
22 occasions and, although I saved the document onto the workstation
23 before, I could not locate it. After I found the document again, I

1 downloaded it to my workstation and saved it onto the same CD-RW as
2 the Detainee Assessment Briefs described above.

3 Although my access included a great deal of information, I
4 decided I had nothing else to send the WLO after sending the Detainee
5 Assessment Briefs and the USACIC report. Up to this point, I had
6 sent them the following: the CIDNE-I and CIDNE-A SIGACT tables; the
7 Reykjavik 13 Department of State cable; the 12 July 2007 aerial
8 weapons team video and the 2006-2007 rules of engagement documents;
9 the SIGACT report and supporting documents concerning the 15
10 individuals detained by the Baghdad Federal Police; the U.S. SOUTHCOM
11 and Joint Task Force Guantánamo Detainee Assessment Briefs; the
12 USACIC report on the WikiLeaks website -- on the WikiLeaks
13 organization and website.

14 Over the next -- over the next few weeks, I did not find --
15 or I did not send any additional information to the WLO. I
16 considered -- I continued to converse with Nathaniel over the Jabber
17 client and in the WLO IRC channel. Although I stopped sending
18 documents to WLO, no one associated with the WLO pressured me into
19 giving more information. The decisions that I made to send documents
20 and information to the WLO and website were my own decisions and I
21 take full responsibility for my actions.

22 Facts regarding the unauthorized storage and disclosure of
23 other government documents. On 22 March 2010, I downloaded two

1 documents. I found these documents over the course of my normal
2 duties as an analyst. Based on my training and the guidance of my
3 superiors, I looked at as much information as possible. Doing so
4 provided me with the ability to make connections others might miss.
5 On several occasions during the month of March, I accessed
6 information from a government entity. I read several documents from
7 a section within this government entity. The content of two of these
8 documents upset me greatly. I have difficulty believing what this
9 section was doing.

10 On 22 March 2010, I downloaded the two documents that I
11 found troubling, I compressed them into a zip file named "blah.zip"
12 and burned them onto a CD-RW. I took the CD-RW to my CHU and saved
13 the file to my personal computer. I uploaded the information to the
14 WLO website using the designated drop box.

15 Facts regarding the unauthorized storage and disclosure of
16 the Net-Centric Diplomacy Department Of State cables. In late March
17 of 2010, I received a warning over Jabber from Nathaniel that the WLO
18 website would be publishing the aerial weapons team video. He
19 indicated that the WLO would very likely -- would be very busy and
20 the frequency and intensity of our Jabber conversations decreased
21 significantly.

22 During this time, I had nothing but work to distract me. I
23 read more of the diplomatic cables published on the Department of

1 State Net-Centric Diplomacy server. With my insatiable curiosity and
2 interest in geopolitics, I became fascinated with them. I read not
3 only the cables on Iraq, but also about countries and events I found
4 interesting. The more I read, the more I was fascinated by the way
5 we dealt with other nations and organizations. I also began to think
6 that they documented backdoor deals and seemingly criminal activity
7 that didn't seem characteristic of the de facto leader of the free
8 world.

9 Up to this point, during deployment, I had issues that I
10 struggled with and difficulty at work. Of the documents released,
11 the cables were the only ones I was not absolutely certain wouldn't -
12 - couldn't harm the United States. I conducted research on the
13 cables published on the net -- on Net-Centric Diplomacy, as well as
14 how Department of State cables work in general. In particular, I
15 wanted to know how each cable was published on SIPRNET via the Net-
16 Centric Diplomacy.

17 As part of my open-source research, I found a document
18 published by the Department of State on its official website. The
19 document provided guidance on caption markings for individual cables
20 and handling instructions for their distribution. I quickly learned
21 that the caption markings clearly detailed the sensitivity level of a
22 Department of State cable. For example, "NODIS," or "No
23 Distribution," was used for messages of the highest sensitivity and

1 were only distributed to the authorized recipients. The SIPDIS or
2 SIPRNET Distribution caption was applied only to reporting at other
3 information messages that were deemed appropriate for a release of a
4 wide number -- to a wide number of individuals.

5 According to the Department of State guidance for a cable
6 to have the SIPDIS -- that caption, it could not include other
7 captions that were intended to limit distribution. The SIPDIS
8 caption was only for information that could be shared with anyone
9 with access to SIPRNET. I was aware that thousands of military
10 personnel, DoD, Department of State, and other civilian agencies have
11 easy access to the cables and the fact that the SIPDIS caption was
12 only for wide distribution made sense to me, given that the vast
13 majority of the Net-Centric Diplomacy cables were not classified.
14 The more I read the cables, the more I came to the conclusions that
15 this was the type of information that should be -- that this type of
16 information should become public. I once read and used a quote on
17 open diplomacy written after the First World War and how the world
18 would be a better place if states would avoid making secret pacts and
19 deals with and against each other.

20 I thought these cables were a prime example of a need for a
21 more open diplomacy. Given all the Department of State information I
22 read, the fact that most of the cables were unclassified and that all
23 the cables had the SIPDIS caption, I believed that the public release

1 of these cables would not damage the United States. However, I did
2 believe the cables might be embarrassing, since they represented very
3 honest opinions and assessments behind or statements behind the backs
4 of other nations and organizations.

5 In many ways, these cables are a catalog of cliques and
6 gossip. I believe exposing this information might make some within
7 the Department of State and other government entities unhappy. On 22
8 March 2010, I began downloading a copy of the SIPDIS cables using the
9 program Wget described above. I used instances of the Wget
10 application to download the Net-Centric Diplomacy cables in the
11 background. As I worked on my daily tasks, the Net-Centric Diplomacy
12 cables were downloaded from 28 March 2010 to 9 April 2010. After
13 downloading the cables, I saved them onto a CD-RW. These cables went
14 from the earliest dates in Net-Centric Diplomacy to 28 February 2010.
15 I took the CD-RW to my CHU on 10 April 2010. I sorted the cables on
16 my personal computer, compressed them using the bzip2 compression
17 algorithm described above and uploaded them to the WLO via the
18 designated drop box described above.

19 On 3 May 2010, I used Wget to download an update of the
20 cables for the months of 20 -- for the months of March 2010 and April
21 2010 and saved the information onto a zip file and burn it to a CD-
22 RW. I took -- I then took the information--I then took the CD-RW to
23 my CHU and saved them to my computer. I later found that the file

1 was corrupted during the transfer. Although I intended to re-save
2 another copy of these cables, I was removed from the T-SCIF on 8 May
3 2010 after an altercation.

4 Facts regarding the unauthorized storage and disclosure of
5 the Garani Farah Province, Afghanistan 15-6 investigation and videos.
6 In late March 2010, I discovered a U.S. CENTCOM directory only 2009
7 airstrike in Afghanistan. I was searching CENTCOM for information I
8 could use as an analyst. As described above, this was something that
9 myself and other analysts and officers did on a frequent basis. As I
10 reviewed the documents, I recalled the incident and what happened.
11 The airstrike occurred in the Garani Village of the Farah Province in
12 northwestern Afghanistan. They receive worldwide press and --
13 worldwide press coverage during the time as it was reported that up
14 to 100 to 150 Afghan civilians, mostly women and children, were
15 accidentally killed during the airstrike.

16 After going through the report and its annexes, I began to
17 review the incident as being similar to the 12 July 2007 aerial
18 weapons team engagements in Iraq. However, this event was noticeably
19 different in that it involved a significantly higher number of
20 individuals, larger aircraft, and much heavier munitions. Also, the
21 conclusion of the report are even more disturbing than those of the
22 12 July 2007 incident. I did not see anything in the 15-6 report or
23 its annexes that give away sensitive information. Rather, the

1 investigation and its conclusions help explain how this incident
2 occurred and what those involved should have done and how to avoid an
3 event like this from occurring again.

4 After investigating the report and its annexes, I
5 downloaded the 15-6 investigation, PowerPoint presentations, and
6 several other supporting documents to my DCGS-A workstation. I also
7 downloaded three zip files containing the videos of the incident. I
8 burned this information onto a CD-RW and transferred it to the
9 personal computer in my CHU. Either later that day or the next day I
10 uploaded the information to the WLO website, this time using a new
11 version of the WLO website submission form. Unlike other times using
12 the submission form above, I did not activate the TOR anonymizer.

13 Your Honor, this concludes my statement and facts for this
14 providence inquiry.

15 MJ: All right. Looking at the time, my proposal for the way
16 forward would be to take the recess that we were discussing earlier,
17 go over the charged documents briefly, and then recess for lunch and
18 then begin the rest of the providence inquiry. Is that acceptable to
19 both sides or would you prefer something different?

20 CDC[MR.COOMBS]: That's fine with the defense, Your Honor.

21 TC[MAJ FEIN]: Yes, ma'am, the United States asks for 10 minutes
22 for that recess.

23 MJ: All right. Court is in recess until 25 minutes after 12.

1 [The Article 39(a) session recessed at 1217, 28 February 2013.]

2 [The Article 39(a) session was called to order at 1231, 28 February
3 2013.]

4 MJ: This Article 39(a) session is called to order. Let the
5 record reflect that all parties present when the court last recessed
6 are again present in court.

7 Now, Major Fein, I understand there has been an additional
8 appellate exhibit marked. Would you like to describe it for the
9 record?

10 TC[MAJ FEIN]: Yes, ma'am, Appellate Exhibit -- what has been
11 marked as Appellate Exhibit 501 is a compilation -- two different
12 binders combined all the different charged documents for which
13 Private First Class Manning is pleading guilty today to. And, also,
14 for the record, Private First Class Manning is currently located at
15 the panel box in the back row with a copy of Appellate Exhibit 501
16 and a charge sheet in front of him. Another copy of the Appellate
17 Exhibit 501 -- the record copy is excuse me, the record copy is in
18 front of Private First Class Manning and the Court has a copy in
19 front of her as well.

20 MJ: All right. Thank you. All right, PFC Manning, what I'd
21 like to do is go through -- there are two binders; do you have a copy
22 of them in front of you?

23 ACC: Yes, Your Honor.

1 MJ: All right. I like to go through Appellate Exhibit 501 and
2 have you looked through the binder with me when we go through this to
3 make sure that you either identify or don't -- whether these
4 documents are the actual charged documents that your pleading guilty
5 to.

6 Let's look at tab one ----

7 ACC: Yes, Your Honor.

8 MJ: ---- which would be the charged documents for Charge II,
9 Specification 2, which would be a video file named "12 July 07 CZ
10 Engagement Zone 30 GC Anyone.avi". Now, you're looking at a video.
11 Have you had an opportunity to look at this video?

12 ACC: Yes, Your Honor.

13 MJ: And is it the video that has been charged in the -- in
14 Specification 2 of Charge II?

15 ACC: Yes, Your Honor.

16 MJ: All right. Now, unlike the rest of the charges, this one
17 says, "a video file." So, is it classified or not classified?

18 ACC: It is not, Your Honor.

19 MJ: All right. Thank you. Let's look at tab two. Please take
20 a look at the documents through tab two and let me know when you're
21 finished.

22 **[The accused did as directed.]**

23 ACC: I'm finished, Your Honor.

1 MJ: Are the pages on tab -- enclosed in tab two the charged
2 documents in Specification 3 of Charge II which would be more than
3 one classified memorandum produced by a United States Government
4 agency?

5 ACC: Yes, Your Honor.

6 MJ: All right. And are they, in fact, classified?

7 ACC: They are, Your Honor, yes.

8 MJ: Let's look at tab three. Once again, same procedure for
9 all these tabs, just take a look through them and let me know when
10 you're finished.

11 **[The accused did as directed.]**

12 ACC: I'm finished, Your Honor.

13 MJ: All right. Are the pages at tab three the charged
14 documents in Specification 15 which would be a classified record
15 produced by a United States Army intelligence organization?

16 ACC: Yes, Your Honor.

17 MJ: Okay. And are they, in fact, classified as well?

18 ACC: Yes, Your Honor.

19 TC[MAJ FEIN]: Your Honor, I'm sorry to interrupt, but is it
20 possible that Private First Class Manning put the binder in his lap
21 just while he's flipping the pages?

1 MJ: All right. I think the goal is -- yeah, just keep it down.
2 Thank you PFC Manning. I know this is making it a little bit more
3 difficult. Let's look at tab four.

4 ACC: Yes, Your Honor.

5 MJ: All right. Are you finished with the documents in tab
6 four?

7 ACC: I am, Your Honor.

8 MJ: Are those the charge documents for Specification 5 of
9 Charge II which would be more than 20 classified records from the
10 Combined Information Data Network Exchange-Iraq database?

11 ACC: They are, Your Honor.

12 MJ: And are they classified as well?

13 ACC: Yes.

14 MJ: All right. Let's look at tab five.

15 ACC: Yes, Your Honor.

16 MJ: All right. Are these documents at tab five the charged
17 documents for Specification 7 of Charge II that would be more than 20
18 classified records from the Combined Information Data Network
19 Exchange-Afghanistan database?

20 ACC: They are, Your Honor.

21 MJ: All right. And there they classified as well?

22 ACC: Yes, Your Honor.

23 MJ: Let's look at tab six.

1 ACC: Yes, Your Honor.

2 MJ: All right. Are the documents at tab six the charged
3 documents for Specification 9 of Charge II, that is, more than three
4 classified records from the United States Southern Command database?

5 ACC: It is, Your Honor.

6 MJ: Are they classified as well?

7 ACC: Yes, Your Honor, they are.

8 MJ: All right. Let's look at tab seven.

9 ACC: I'm finished, Your Honor.

10 MJ: Are the documents at enclosure seven the charged documents
11 in Specification 10 of Charge II that would be more than five
12 classified records relating to the military operation in Farah
13 Province, Afghanistan occurring on or about 4 May 2009?

14 ACC: They are, Your Honor.

15 MJ: And are they classified as well?

16 ACC: Most of it is, Your Honor.

17 MJ: Let's look at tab eight.

18 ACC: Yes, Your Honor.

19 MJ: Is this the document that is charged in Specification 14 of
20 Charge II which would be a classified Department of State cable
21 entitled Reykjavik 13?

22 ACC: It is, Your Honor.

23 MJ: Is a classified?

1 ACC: Yes, ma'am.

2 MJ: All right. Let's look at enclosure nine.

3 ACC: I am finished, Your Honor.

4 MJ: All right. Are the documents at tab nine the charged
5 documents in Specification 13 of Charge II which would be more than
6 75 classified United States Department of State cables?

7 ACC: Yes, ma'am.

8 MJ: Are they class -- you testified earlier that most of the
9 Department of State cables were not classified. Are these documents
10 in enclosure nine classified?

11 ACC: These ones, yes, Your Honor.

12 MJ: And are you convinced there's over 70 -- more than 75 of
13 them?

14 ACC: Yes, Your Honor, definitely.

15 MJ: Does either side desire any further inquiry with respect to
16 Appellate Exhibit 501?

17 TC[MAJ FEIN]: No, Your Honor.

18 CDC[MR.COOMBS]: No, Your Honor.

19 MJ: All right. This appears to be a good time to break for
20 lunch. How long would the parties like?

21 CDC[MR.COOMBS]: 1400.

22 MJ: Does that work for the government?

23 TC[MAJ FEIN]: Yes, ma'am.

1 MJ: All right. Court is in recess until 1400.

2 [The Article 39(a) session recessed at 1244, 28 February 2013.]

3 [The Article 39(a) session was called to order at 1408, 28 February
4 2013.]

5 MJ: This Article 39(a) session is called to order. Let the
6 record reflect all parties present when the court last recessed are
7 again present in court.

8 TC[MAJ FEIN]: Ma'am, for the record, Private First Class
9 Manning is back at counsel's table.

10 MJ: All right. Okay, PFC Manning, let's continue on, then,
11 with your providence inquiry.

12 ACC: Yes, ma'am.

13 MJ: All right. I'm going to explain the elements of the
14 offenses for which you've pled guilty.

15 By "elements," I mean those facts which the prosecution
16 would have to prove beyond a reasonable doubt before you could be
17 found guilty if you have pled not guilty. When I state each element,
18 ask yourself two things: first, is the element true and, second,
19 whether you want to admit that it's true. After I list the elements
20 for you, be prepared to talk to me about the facts regarding the
21 offenses.

22 I want you to take a look at Specifications 2, 3, 5, 7, 9,
23 10, and 15 of Charge II as you pled them. These specifications

1 allege the offense of -- as originally charged, alleged the offense
2 of transmitting defense information in violation of Title 18, United
3 States Code section 793(e) and Article 134, UCMJ. Your counsel has
4 entered a plea of guilty by exceptions and substitutions for you to
5 the lesser included offense of conduct prejudicial to good order and
6 discipline and service discrediting conduct under Article 134,
7 clauses one and two. By pleading guilty to this offense, you're
8 admitting that the following elements are true and accurately
9 describe what you did:

10 Element one: that, at or near Contingency Operating
11 Station Hammer, Iraq;

12 Specification two: between on or about 14 February 2010
13 and 21 February 2010, you, without authorization, had possession of,
14 access to, or control over a video named "12 July 07 CZ Engagement
15 Zone 30 GC Anyone.avi".

16 Specification 3: between on or about 17 March and 22 March
17 2010, you, without authorization, had possession of, access to, or
18 control over more than one classified memorandum produced by a United
19 States Government agency.

20 Specification 5: between on or about 5 January 2010 and 3
21 February 2010, you, without authorization, had possession of, access
22 to, or control over more than 20 classified records from the Combined
23 Information Data Network Exchange-Iraq database.

1 Specification 7: between on or about 5 January 2010 and 3
2 February 2010, you, without authorization, had possession of, access
3 to, or control over more than 20 classified records from the Combined
4 Information Data Network Exchange-Afghanistan database.

5 Specification 9: on or about 8 March 2010, you, without
6 authorization, had possession of, access to, or control over more
7 than three classified records from a United States Southern Command
8 database.

9 Specification 10: between on or about 10 April 2010 and 12
10 April 2010, you, without authorization, had possession of, access to,
11 or control over more than five classified records relating to a
12 military operation in Farah Province, Afghanistan, occurring on or
13 about 4 May 2009.

14 And Specification 15: on or about 8 March 2010, you,
15 without authorization, had possession of, access to, or control over
16 a classified record produced by a United States Army intelligence
17 organization, dated 18 March 2008.

18 Elements common to all specifications, element two:

19 That you willfully communicated the classified records,
20 classified memorandum, videos, and files described for each
21 specification in element one to a person not authorized to receive
22 it; and

1 Three: that under the circumstances, your conduct was to
2 the prejudice of good order and discipline in the armed forces or was
3 of a nature to bring discredit upon the armed forces.

4 All right. Some definitions that apply to these offenses
5 are:

6 "Conduct prejudicial to good order and discipline" is
7 conduct which causes a reasonably direct and obvious injury to good
8 order and discipline.

9 "Service discrediting conduct" is conduct which tends to
10 harm the reputation of the service or lower it in public esteem.

11 With respect to good order and discipline, the law
12 recognizes that almost any irregular or improper act on the part of a
13 service member could be regarded as prejudicial in some indirect or
14 remote sense. However, only those acts in which the prejudice is
15 reasonably direct and palpable is punishable under this article.

16 With respect to service discrediting, the law recognizes
17 that almost any irregular or improper act on the part of a
18 Servicemember could be regarded as service discrediting in some
19 indirect or remote sense. However, only those acts which would have
20 a tendency to bring the service into disrepute or which tend to lower
21 it in public esteem are punishable under this article. Under some
22 circumstances, your conduct may not be prejudicial to good order and
23 discipline, but, nonetheless, be service discrediting as I've

1 explained those terms. Likewise, depending on the circumstances,
2 your conduct could be prejudicial to good order and discipline but
3 not be service discrediting.

4 An act is done willfully if it is done voluntarily and
5 intentionally and with the specific intent to do something the law
6 forbids, that is, with a bad purpose to disobey or disregard the law.

7 "Possession" means the act of having or holding property or
8 the detention of property in one's power or command. Possession may
9 mean actual, physical possession or constructive possession.

10 "Constructive possession" means having the ability to exercise
11 dominion or control over an item. Possession inherently includes the
12 power or authority to preclude control by others. It is possible for
13 more than one person to possess an item simultaneously as when
14 several people share control of an item.

15 A person has unauthorized possession of documents,
16 photographs, videos, or computer files when he possesses such
17 information under circumstances or in a location which is contrary to
18 law or regulation for the conditions of his employment.

19 If this was before a trier of fact, whether the person
20 received the information was entitled to have it, the trier of fact
21 would consider all the evidence introduced at trial, to include any
22 evidence concerning the classification status of the information, any
23 evidence relating to the laws and regulations governing

1 classification and declassification of national security information,
2 its handling and distribution, as well as any evidence relating to
3 regulations governing the handling, use, and distribution of
4 information obtained from classification systems.

5 The term "person" means any individual, firm, corporation,
6 education institution, financial institution, government entity, or
7 legal or other entity.

8 Do you understand the elements and the definitions as I've
9 read them to you?

10 ACC: Yes, Your Honor.

11 MJ: Do you have any questions about them?

12 ACC: No, ma'am.

13 MJ: You understand that your plea of guilty admits that these
14 elements accurately describe what you did?

15 ACC: Yes, Your Honor.

16 MJ: Do you believe and admit that the elements and definitions,
17 taken together, correctly describe what you did?

18 ACC: Yes, Your Honor.

19 MJ: All right. Now, do you understand that, as we talked about
20 before, that you're -- If I accept your plea to these lesser included
21 offenses and the government decides to go forward with the greater
22 offenses, your plea is going to establish some -- the elements we
23 talked about earlier -- some of the elements for the greater offense.

1 Do you understand that?

2 ACC: Yes, Your Honor.

3 MJ: Okay. All right. Why don't we go -- we'll just go in

4 order, here. Why don't we start with Specification 2 of Charge II?

5 But, before we get there, let's just talk in generalities. You went

6 over some of this in your statement and, as we go through this, I may

7 be asking you just to orient me in your statement where you talked

8 about the particular specifications involved.

9 ACC: Yes, Your Honor.

10 MJ: But, just in the beginning, you told me earlier -- you

11 testified earlier that you were in the Army for about 5 1/2 years, is

12 that accurate?

13 ACC: Just under, yes, ma'am.

14 MJ: Okay. And were you in -- at -- stationed at Fort Drum, New

15 York before you deployed?

16 ACC: I was in training before I deployed -- well -- yes, Your

17 Honor.

18 MJ: Okay. Well, just briefly walk me through, then. You came

19 into the Army and you said your basic training lasted a little bit

20 longer than usual?

21 ACC: Yes, Your Honor.

22 MJ: And then when did you go to AIT?

23 ACC: That would've been April of 2008, Your Honor.

1 MJ: Okay. And you were an intelligence analyst?

2 ACC: Yes, Your Honor.

3 MJ: And, just in a nutshell, what do intelligence analysts --

4 what do they train you to do with classified information?

5 ACC: Well, one of the first things that they teach at -- or

6 whenever I went through training was -- one of the first things that

7 they teach us -- is information security which is mostly talking

8 about classified information, specifically, Your Honor.

9 MJ: In your training, did they tell you -- who gets to classify

10 information in the United States?

11 ACC: The original classification authorities, they have the

12 actual authority, although they can delegate that authority from my

13 understanding, Your Honor.

14 MJ: Okay. And if a person isn't an original classification

15 authority or delegate, do they have the authority to classify

16 information? At the original level?

17 ACC: At the original level, no, Your Honor.

18 MJ: What about to declassify information?

19 ACC: I don't know that, Your Honor. I think it requires the

20 original classification authority's approval, Your Honor.

21 MJ: Okay. So, you went to AIT and you learned about

22 information security?

23 ACC: Yes, Your Honor.

1 MJ: And then what happened? Where did you go after AIT?

2 ACC: I went -- I traveled to Fort Drum and then I stayed there

3 until I deployed, Your Honor.

4 MJ: And you were still on a training status at that time?

5 ACC: We weren't officially -- I mean, I was in garrison, Your

6 Honor, but we spent most of our time -- I spent most of my time at

7 Fort Drum in some kind of training, Your Honor.

8 MJ: You mean like Soldierly training as opposed to intelligence

9 class training?

10 ACC: Yes, Your Honor.

11 MJ: Okay.

12 ACC: So we had TDY to different locations and we went to Fort

13 Polk for 2 months, Your Honor.

14 MJ: Okay. So your unit was gearing up to deploy, then, is that

15 right?

16 ACC: Yes, Your Honor.

17 MJ: Okay. And when did you deploy?

18 ACC: We deployed October of 2009, Your Honor.

19 MJ: Okay. And when you deployed, you said -- you testified you

20 were on FOB Hammer and that's in Iraq?

21 ACC: Yes, Your Honor.

22 MJ: Okay. What was your job there?

1 ACC: I was an analyst that had -- I had a particular problem set
2 as my assigned thing that I did. It was -- we were militia -- I was
3 a militia expert -- there's a different name for it, but we didn't go
4 by that publicly, Your Honor.

5 MJ: Okay. And -- I'm not trying to elicit any classified
6 information, so if I'm heading that way, please stop me.

7 ACC: Yes, Your Honor.

8 TC[MAJ FEIN]: Yes, ma'am.

9 MJ: All right. So, you are in Iraq -- where do you -- when
10 you're doing this intelligence analyst work, where are you doing it?

11 ACC: We were doing it in the temporary SCIF -- the temporary
12 Sensitive Compartmentalized Information Facility at the brigade
13 headquarters building that we had at FOB Hammer, Your Honor.

14 MJ: So that's called a "SCIF"?

15 ACC: A T-SCIF, Your Honor.

16 MJ: T-SCIF? What's a SCIF?

17 ACC: A SCIF is a Sensitive Compartmentalized Information
18 Facility where information at higher -- there is a higher level of
19 sensitivity that the government has authorized these particular
20 locations to hold this information, Your Honor.

21 MJ: Can anybody go into a SCIF?

22 ACC: No, Your Honor.

23 MJ: What's a -- what are the requirements to go into a SCIF?

1 ACC: Generally, a -- you need to have an SCI or -- you have to
2 have an SCI clearance -- caveat to your security clearance or an
3 escort and they can lower -- you can make a SCIF clean -- you can
4 clean a SCIF for temporary visitors, Your Honor.

5 MJ: Okay. But you worked there permanently, is that correct?

6 ACC: Yes, Your Honor.

7 MJ: And what was your clearance level at the time?

8 ACC: Top Secret, Your Honor.

9 MJ: And what's the difference between a SCIF and -- you said
10 you worked in a T-SCIF?

11 ACC: Yes, Your Honor.

12 MJ: What's the difference between a SCIF and a T-SCIF?

13 ACC: T-SCIF are locations that are assigned by a government
14 agency to hold this information temporarily, so they're not designed
15 to be permanent structure locations so they have some -- they don't
16 always meet all the requirements that a full SCIF has because of --
17 because it's in the field or something.

18 MJ: Okay. So, when you are in the SCIF and you are working,
19 what kind of automation do you use? Do you have just a regular
20 computer or is it something different?

21 ACC: We have lots of computers, Your Honor.

22 MJ: Okay. If you have -- well -- what is a -- let's go to
23 SIPRNET. What is SIPRNET?

1 ACC: SIPRNET is Internet protocol system that we have at the
2 Secret level where we can transfer information up to that level of
3 information, Your Honor.

4 MJ: Okay. Do the charged documents that we're talking about at
5 issue, were they all on SIPRNET?

6 ACC: Yes, Your Honor.

7 MJ: Okay. So, they didn't come from any other -- SIPRNET is a
8 system on a particular computer, is that right?

9 ACC: Yes, Your Honor, the ----

10 MJ: I mean, you can't have your regular computer and access
11 SIPR through that, can you?

12 ACC: No, no, Your Honor.

13 MJ: Okay. So, it's a separate computer, basically -- is it to
14 hold Secret-level classified information?

15 ACC: Up to that level, yes, Your Honor.

16 MJ: Okay.

17 ACC: It can be lower, but ----

18 MJ: Can it be unclassified?

19 ACC: You can hold unclassified information on there, yes, Your
20 Honor.

21 MJ: Okay. So, if you're working with SCIF and you have
22 unclassified information -- or working in a SCIF and you're using

1 SIPRNET and you have unclassified information that's on SIPRNET, are
2 you allowed to print that off and take it with you?

3 ACC: If it's unclassified ----

4 MJ: Yes.

5 ACC: ---- and the paper has "Unclassified" on the top and
6 bottom, then yes, Your Honor.

7 MJ: Okay. Now, what if it has -- or there's a paragraph in it
8 that has the Secret classification or a -- but first of all, before
9 we get there, can you explain to me the difference between
10 classification levels at the Confidential level, at the Secret level,
11 and the Top Secret level?

12 ACC: Generally, yes, Your Honor, so the -- information at the
13 Confidential level, which the military -- we don't usually use
14 Confidential, but Confidential usually involves a lower sensitivity
15 of documents and I think that you don't have to, necessarily, always
16 have it in a -- you don't always have to lock it up; you can leave
17 some of it on your desk and things like that, Your Honor. But for
18 Secret, you can -- you have to lock it up and there always has to be
19 somebody that has control over that level and then, at the TS level,
20 there is so many -- there's a lot of different types of handling
21 instructions, Your Honor.

1 MJ: Okay. Well, with Secret level, if you're working in the T-
2 SCIF like you were and you have -- you're working with Secret level
3 documents that, I guess, there are -- hard copy ----

4 ACC: Yes, Your Honor.

5 MJ: ---- and you finish work or you leave the SCIF to go for
6 dinner or something like that, do you have to store those in a
7 particular place or the fact that they're in a SCIF is enough?

8 ACC: Yes, yes, Your Honor. Secret information -- it's called a
9 Secret Collateral Area, you can keep up to Secret information -- just
10 as a habit, sitting around, Your Honor, as long as it's in a SCIF or
11 a certified T-SCIF.

12 MJ: Okay. So, just to make sure I'm -- clear me up if I'm
13 wrong, if you have information that's classified at the Secret level
14 and you're some place other than a SCIF, does it have to be in a safe
15 or some locked place?

16 ACC: Normally, yes, Your Honor, or as long as you -- as long as
17 it's in a container, you can have -- as long as it contained within
18 two ----

19 MJ: Like one of those carry bags?

20 ACC: The courier bags and -- or, again, you could -- sometimes
21 you have -- there are certain circumstances where you could have a
22 Secret collateral area outdoors, but it's very -- that's only a field
23 situation, Your Honor.

1 MJ: Okay. But would such an area have to be designated by
2 someone with authority to do that?

3 ACC: Yes, Your Honor.

4 MJ: I mean, you can't just decide -- can you just decide,
5 "Okay, I'm going to designate this an area where I'm putting all
6 Secret documents out in the open"?

7 ACC: Correct, you need to have authority for that, Your Honor.

8 MJ: Okay. So, when you're, then, in your -- so, if I'm
9 understanding you, when you're working in your T-SCIF, it's --
10 because it's a SCIF in and of itself, you can come and go and leave
11 the documents or the CD-ROMs, or anything that you just discussed,
12 basically out for other people working in the SCIF to see and use, is
13 that correct?

14 ACC: Yes, Your Honor.

15 MJ: Okay. Now, let's move on, then, to Specification 2 of
16 Charge II. Can you show me where in your statement that you're
17 talking about that

18 ACC: Your Honor, we start talking about Charge -- or
19 Specification 2 at -- pretty much, closer to the middle. It's the --
20 --

21 MJ: Let me ask you a question ----

22 ACC: ---- Paragraph 8 at ----

1 MJ: ---- PFC Manning, do you think it would be easier to get
2 through this if we go chronologically by, you know -- as you sort of
3 did in your statement; the first things that you downloaded and how
4 it evolved? Would that be easier for you or ----

5 ACC: Oh, we can go by specification.

6 MJ: ---- would specification by specification? All right. So,
7 just then tell me where Specification 2 is.

8 ACC: Specification 2 is at Page 19.

9 MJ: Okay. All right, now, we talked about -- earlier, when I
10 asked you, with respect to the video at Specification 2 of Charge II,
11 you told me that that was not classified, is that correct?

12 ACC: Yes, Your Honor.

13 MJ: Where did you access that video? How did you have access
14 to it?

15 ACC: Well, it was on our shared T-drive, Your Honor, that S-6
16 operated on SIPR.

17 MJ: Okay. So, it was on SIPR? So, tell me about how -- so,
18 you had access to that video. Now, were you authorized to give that
19 video to anyone outside of the service who didn't have a clearance?

20 ACC: No, Your Honor.

21 MJ: Why not? It wasn't classified.

22 ACC: I thought it was classified. I looked at the
23 classification matrix for -- at the corps level whenever I was

1 reviewing the video and I thought it would -- I thought that the OCA
2 would have said the same thing -- that it would have been classified
3 at the Secret level, Your Honor.

4 MJ: Was it marked in any way?

5 ACC: It didn't have markings, Your Honor, but it -- going by the
6 matrix, you can -- because it didn't have markings, that's why I went
7 to the classification matrix, Your Honor.

8 MJ: And what is a classification matrix?

9 ACC: It's sort of a quick-hand -- a short-hand guide for
10 derivative classification -- for people with derivative
11 classification to classify documents within the guidelines of the
12 original classification authority when you don't have an OCA there to
13 determine, specifically, what it is at that time.

14 MJ: Just to make sure I understand this, we talked earlier
15 about if you're doing an original classification, it has to be by an
16 OCA or his delegee, right?

17 ACC: Yes, Your Honor.

18 MJ: And then if you -- I guess you create your own -- you
19 create products down the road using some of that originally
20 classified information? Is that what derivative classification is?

21 ACC: Yes, Your Honor.

22 MJ: Okay. And who has authority to derivatively classify?

1 ACC: Anybody with that level of security clearance and as long
2 as you can point to where you're getting the authority from the
3 original classification authority, then you can do that, Your Honor.
4 MJ: And the matrix is where you would look to see that?
5 ACC: Yes, in the Army, or in the -- downrange, in the DoD
6 environment, we have matrices --I t's a table that tells you what the
7 classification level is for this particular type of information, Your
8 Honor.
9 MJ: Okay. So what did you do -- when did you first see the
10 video?
11 ACC: This would have been in January or late February -- it was
12 mid-February of 2010, Your Honor.
13 MJ: Okay. And what did you -- you said you originally saw the
14 video and ----
15 ACC: Yes, Your Honor.
16 MJ: ---- some people in your office were talking about it?
17 ACC: Yes, Your Honor.
18 MJ: Okay. And this was the video that you described as "war
19 porn"?
20 ACC: Yes, Your Honor.
21 MJ: Okay. And what was going on in the video that you can talk
22 about?

1 ACC: It was aerial weapons team -- it was from the camera
2 onboard of an aerial team aircraft that also record the flight crew
3 audio, Your Honor, and they're just -- in the course of duties,
4 they're engaging some -- engaging some targets and then there's two
5 separate engagements and then there's a third section to the video
6 for a third one, later.

7 MJ: Okay. And you testified when you were reading your
8 statement that some news organizations were interested in getting
9 that video from the Freedom of Information Act?

10 ACC: Yes, Your Honor.

11 MJ: And did you know why they were interested in getting that
12 video?

13 ACC: Just based upon what I could see online on some open source
14 reporting that I was looking up, Your Honor.

15 MJ: And what did that say?

16 ACC: It said that the company, Reuters, had made the request and
17 that those requests were not necessarily being denied, but they were
18 being -- they were receiving responses to that, but not getting the
19 video, Your Honor.

20 MJ: Okay. And what did you do with the video? You said you
21 did some research here to find out what the facts were with respect
22 to the video and that caused you to reach some conclusions -- and
23 what were those conclusions that you reached?

1 ACC: Conclusions -- I mean -- conclusions about?

2 MJ: Well, about -- you made a decision -- did you make a
3 decision, at some point, then you needed to give that video to the
4 news media?

5 ACC: Yes, Your Honor, probably about a week or so after first
6 viewing it, Your Honor.

7 MJ: Okay. And did you, at some point, give that video -- I
8 mean, what did you do -- did you take it out of the T-SCIF? Let's
9 start there.

10 ACC: Yes, Your Honor, I burned the video to a CD-RW and then I
11 took that out of the T-SCIF put it onto my personal computer, Your
12 Honor.

13 MJ: Okay. Now, is a CD-RW ----

14 ACC: Or it could have been ----

15 MJ: ---- a CD-ROM?

16 ACC: Yes, Your Honor.

17 MJ: It's just a disc?

18 ACC: Some of them might be DVD-RWs, but I'm just using compact
19 discs in general, Your Honor.

20 MJ: Okay. And so you took it out and put it on your own
21 personal computer?

22 ACC: Yes, Your Honor.

23 MJ: Now, were you authorized to do that?

1 ACC: No, Your Honor.

2 MJ: What is the guidance given to people like you working in a
3 T-SCIF with regard to information that comes from SIPRNET?

4 ACC: If it's coming from a CD -- if it's on a CD, there's -- I
5 mean, there are two thoughts on how it's done, Your Honor. Some
6 people think that if you just burn only unclassified information onto
7 the CD and then you mark the CD as unclassified, then you can do
8 whatever with it, but then there's a lot of -- but the more proper
9 way of doing it would be to verify and there are some technical
10 personnel that can verify that nothing -- no other digital,
11 potentially Secret information might be inside of that first before
12 you transfer it over, Your Honor.

13 MJ: So, if I'm understanding you correctly, if you have
14 completely unclassified information, it's okay to -- and it's
15 verified, it's okay to take it out of the T-SCIF and put it on your
16 own personal computer?

17 ACC: Yes, Your Honor, but it's -- there's different ways --
18 there's different ideas on how it's verified. Some -- I've seen
19 where you need a memorandum sometimes and I've seen where you just
20 needed somebody to -- with the right rank to say it's okay, Your
21 Honor.

22 MJ: What rank were you at the time?

23 ACC: I was a specialist, Your Honor.

1 MJ: Were you, as a specialist, at that time, authorized to
2 verify?

3 ACC: No, Your Honor.

4 MJ: So, if you wanted to take information, even unclassified
5 information, out of the SCIF and put it on your personal computer,
6 you would've had to go to somebody higher in the chain? Is that what
7 I'm understanding that, at a minimum, to get verification?

8 ACC: Yes, Your Honor, I would've had -- I think the S-2 would
9 have been the person that I would have gotten guidance from, Your
10 Honor.

11 MJ: Did you do that with respect to this video before you took
12 it?

13 ACC: No, Your Honor.

14 MJ: Okay. So, did you have any authorization to take the video
15 out of the T-SCIF?

16 ACC: No, Your Honor.

17 MJ: Did you have any authorization to put it on your personal
18 computer?

19 ACC: No, Your Honor.

20 MJ: All right. Once it was there, what did you do with it?

21 ACC: It was -- I kept it on -- I left it on the computer for a
22 few days, Your Honor. I wasn't sure what I was going to do with it.
23 I thought -- I mean, I think I had just come back off mid-tour leave,

1 Your Honor, and I wasn't -- I thought I would just keep it and I
2 intended on giving -- on somehow getting it to Reuters at some point
3 so they can see it, but I didn't know how. It took me a few days
4 until I decided to upload it to the website, Your Honor.

5 MJ: Okay. I believe you testified earlier how you did that,
6 but just briefly go -- recount that once again -- how you uploaded
7 it.

8 ACC: I just went to the website -- the WikiLeaks website, in
9 this case, and I went -- and I clicked around and I found a
10 submission form and I uploaded the video using the submission form,
11 Your Honor.

12 MJ: And to your knowledge -- I mean, you were submitting at
13 that point, were you submitting it to a particular person or to the
14 organization of WikiLeaks?

15 ACC: Just the organization, Your Honor.

16 MJ: Now, did you -- were any of those people cleared, to your
17 knowledge, to receive this?

18 ACC: No, Your Honor.

19 MJ: Did anybody from WikiLeaks have a need to know, as defined
20 by the United States government ----

21 ACC: No, Your Honor.

22 MJ: ---- for classified information?

23 ACC: Not to my knowledge, Your Honor, no.

1 MJ: Okay. And you believed, actually, that this video was
2 classified at the time?

3 ACC: Yes, Your Honor, I did.

4 MJ: Now, as I understand from both parties, the video actually
5 wasn't classified, is that correct? Government?

6 TC[MAJ FEIN]: Yes, ma'am, after a classification review was
7 conducted it was determined not to be classified.

8 CDC[MR.COOMBS]: That's correct, ma'am.

9 MJ: Then if it ultimately was determined not to be classified,
10 why was it wrong for you to take -- why was it unauthorized for you
11 to take it out of the SCIF and to send it to WikiLeaks?

12 ACC: Well, first, Your Honor, it -- at the time, I thought it
13 was -- I believed it was classified and then, also, the digital
14 method -- you're supposed to have verification and I didn't have
15 anybody to verify and ensure that that information was okay to put
16 onto a -- to downgrade its level to an unclassified network, Your
17 Honor.

18 MJ: And you had to have that authority to do that?

19 ACC: Yes, Your Honor.

20 MJ: Even if it wasn't classified, ultimately, you still had to
21 have the authority to do that with that information at the SCIF at
22 that time, is that correct?

1 ACC: Yes, Your Honor, whether verbal or on paper, Your Honor,
2 yes.

3 MJ: Okay. Now, here, your element two is that you willfully
4 communicated the video to a person not entitled to receive it. Was
5 WikiLeaks entitled to receive the video?

6 ACC: No, Your Honor.

7 MJ: In your statement, you talk about, on Page 20, that you
8 transferred the video because you were disturbed, basically, by its
9 contents and you thought it should be out in the public because
10 people were killing kids -- or killed kids, is that correct or do you
11 want to articulate that for a little bit better?

12 ACC: Just to -- I found it -- I mean, I find it trouble -- I
13 found the video troubling at the time, Your Honor, and I still do,
14 but it's just my opinion, Your Honor.

15 MJ: Okay. Going to go over this little bit with you all the
16 way through, but let's start here. There's certain potential
17 defenses and when we get into -- that may or may not be raised by the
18 evidence if this case actually went into trial, but -- and it goes a
19 little bit with your willfulness element because you have to be --
20 willfulness has -- if you're acting willfully, you have to act
21 intentionally with the bad purpose to disobey the law. Now, in your
22 case, did you know it was not lawful to -- were you intending to
23 violate the law when you said that video to WikiLeaks?

1 ACC: Yes, Your Honor, I knew that, yes Your Honor.

2 MJ: Okay. Now, there is also a potential defense -- well,
3 there is two of them. One of them is called "justification" and what
4 that is -- is it excuses a crime if it's done in the proper
5 performance of a legal duty. Did you believe you had a legal duty to
6 transmit that video -- take it to your personal computer and give it
7 to WikiLeaks?

8 ACC: No, Your Honor.

9 MJ: Okay. So, do you believe the defense of justification
10 applies in your case?

11 ACC: I do not, Your Honor, no.

12 MJ: All right. And, lastly, I want to talk to you about the
13 necessity defense and what that is -- is it's not formally recognized
14 in the Uniform Code of Military Justice, but the appellate courts
15 have said it's a form of a duress defense. What a duress defense is
16 -- is when a third party -- where there's a threat of serious,
17 imminent harm to you or somebody else caused by a third-party.
18 Necessity is a little bit different because it's the circumstances --
19 it's the choice of evils defense. The typical example that's given
20 for necessity is if you have to trespass over -- if there's somebody
21 who is drowning in a pond and you have to trespass over somebody's
22 yard to get to that pond to save that person and there's nobody else
23 around to save that person so if you don't trespass over that

1 person's yard, that person -- the other person in the pond drowns.
2 So, that's the defense of necessity, basically; it's a choice of
3 evils defense. So, you have to commit your crime to -- because of
4 the threat of serious, imminent harm to somebody else.

5 In your case, do you believe the necessity defense applies
6 when you transferred that video?

7 ACC: No. No, Your Honor, I don't believe it applies in this
8 case, Your Honor.

9 MJ: Okay. Now, the third element to this offense is that the
10 conduct has to be prejudicial to good order and discipline or service
11 discrediting conduct. Do you believe that your transmission of this
12 video to WikiLeaks was prejudicial to good order and discipline?

13 ACC: Yes, Your Honor.

14 MJ: Why?

15 ACC: Well, in the military we have rules and regulations and
16 structures designed to safeguard sensitive information, whether it be
17 classified or unclassified and I circumvented those and, thereby --
18 you know, by circumventing them on my own authority without -- I'm
19 not the right pay grade to make these decisions or anything, so, by
20 doing that, I violated some orders and regulations and that's
21 prejudicial to good order and discipline.

22 MJ: Okay. So, what you're telling me is sometimes referred
23 into the law as "Self-help." And so, if somebody else has the

1 authority to make the rules and you don't agree with them, you elect
2 a self-help remedy to basically do -- go against the law because you
3 believe, personally, it's for a greater good. Is that kind of
4 describing what you did a little bit?

5 ACC: Yes, Your Honor.

6 MJ: Okay. You just told me that that kind of conduct is
7 prejudicial to good order and discipline because the military has a
8 command structure that's established to make those rules and people
9 in the military need to follow them, is that what you're telling me?

10 ACC: Yes, Your Honor.

11 MJ: Okay. Now, what about service discrediting? Do you think
12 that your conduct in giving the video to WikiLeaks is service
13 discrediting?

14 ACC: Yes, Your Honor.

15 MJ: Why?

16 ACC: Well, there's -- for the service discrediting, it's about
17 public perception of the military and the services and our ability to
18 -- and their trust and their perception that we can safeguard our
19 sensitive information for their protection. So, by not abiding by
20 those -- by the system, it undermines our -- our service, Your Honor,
21 and their perception of how we operate, Your Honor.

22 MJ: Okay. So, basically, if I'm understanding what you're
23 saying correctly, people should -- the military would hope that

1 people have confidence in the system and the people in it to follow
2 the rules and, basically, if you don't have any rules or people
3 aren't following the rules -- I mean, if there is more than one
4 person that's doing what you're doing then the whole system crashes?

5 ACC: Yes, Your Honor.

6 MJ: And I don't want to put words in your mouth, I mean, I'm
7 just sort of paraphrasing what I thought you told me. Is that a
8 little ----

9 ACC: You got it.

10 MJ: ---- bit, in essence, of what you're telling me?

11 ACC: Yes, Your Honor.

12 MJ: Okay. How do you know WikiLeaks wasn't entitled to receive
13 the video?

14 ACC: Well, Your Honor, it wasn't over an -- to start off with,
15 it wasn't using an authorized means of--for transferring this
16 information as far as I was aware. I mean, this was over a non-
17 secure network, so I have no guarantees that anybody is authorized to
18 receive it on the other end and I'm not aware that -- I mean, I know
19 that they're -- I'm not aware of them being a U.S organization -- or
20 U.S. government entity, so -- and then, also, I'm not aware of any of
21 them having any type of security clearances or anything, Your Honor.

22 MJ: Okay. And I know you talked about it earlier in your
23 statement not going to try to get you to rehash your entire

1 statement, but, just briefly, what's your understanding of WikiLeaks?
2 What kind of -- what's -- how did you discover it and what did you
3 come to think of it?

4 ACC: I discovered it in November -- around the Thanksgiving
5 timeframe of 2009 when they published some SMS text -- or text
6 messages or -- and then I did some research into them after that
7 based upon the fact that I had heard of the website before, but never
8 visited it prior to that, but I was interested -- I became interested
9 in it after that and I became familiar with the organization and how
10 it operated and what they were publishing and all the rest of it
11 after a few weeks of going through it -- going through stuff, both on
12 the open-source Google site on my personal computer and using my
13 access to Secret documents, Your Honor.

14 MJ: Okay. You said an "SMS text." What's that?

15 ACC: It's a Short Messaging System -- it's basically -- whenever
16 you text message on cell phones, those are -- that's the kind of
17 message. But, before hand, it used to be pagers -- it's the same
18 standard that they still haven't updated for modern phones, yet, Your
19 Honor.

20 MJ: Okay. And you said you did some intelligence and you came
21 to learn about WikiLeaks and its organization. What did you learn?

22 ACC: I learned about how -- I learned -- I was trying to learn
23 how it was structured, where their servers were, who operated it,

1 just for my -- because it -- they're not as open about that stuff as
2 normal -- or as normal websites and publishers are so I found that
3 interesting, Your Honor. I don't know if I missed the question, Your
4 Honor?

5 MJ: No, no, you answered it. Did WikiLeaks ultimately release
6 the video?

7 ACC: Yes, Your Honor.

8 MJ: Okay, is that what you said in your ----

9 ACC: In April.

10 MJ: ---- statement, here, in 5 April of 2010 ----

11 ACC: Yes, Your Honor.

12 MJ: Okay, I believe you've already answered this, but let me
13 just ask one more time, did you willfully communicate that video to
14 WikiLeaks?

15 ACC: Yes, Your Honor.

16 MJ: Does either side believe any further inquiry is required
17 with respect to Specification 2 of Charge II?

18 CDC[MR.COOMBS]: Nothing from the defense, Your Honor.

19 TC[MAJ FEIN]: One moment please, Your Honor.

20 MJ: Uh-huh.

21 TC[MAJ FEIN]: No, just a factual clarification for the record.
22 It might be worth the Court asking if there's a difference between

1 COS Hammer and FOB Hammer because the two terms are being used
2 interchangeably.

3 MJ: What Hammer? What's the first one you said?

4 TC[MAJ FEIN]: Forward Operating Base Hammer, ma'am, or Combined
5 Operating Station -- Contingency Operating Station; FOB and COS
6 Hammer.

7 MJ: Okay. PFC Manning, what is the difference between FOB and
8 COS Hammer?

9 ACC: They are the same location, Your Honor, but -- and we never
10 really understood what -- when the change was, but it was used
11 interchangeably while we were there as well, Your Honor.

12 MJ: So they're both the same place?

13 ACC: Yes, Your Honor.

14 MJ: Just have different names at different times?

15 ACC: I believe Corps came down with the change, but we didn't
16 adopt it, Your Honor.

17 MJ: Okay. So, in your -- the charges and specifications at
18 issue here, they're all charged with happening at F-O-B Hammer, I
19 believe.

20 ACC: Combined Operating Station, Your Honor.

21 MJ: Oh -- that's -- hold on. I'm sorry, Contingency Operation
22 -- was it Combined Operating Station or Contingency Operating
23 Station?

1 ACC: I don't -- it's Contingency Operating Station, Your Honor.
2 MJ: Okay, and is that what it was called when you were there?
3 ACC: There was a lot of different names for it, Your Honor.
4 MJ: Okay, was that one of them?
5 ACC: That was one of them, yes, Your Honor.
6 MJ: When you look at that, when it says -- look at the -- when
7 it says, "that, at or near Contingency Operating Station Hammer,
8 Iraq," does that mean to you where you were in Iraq or does that mean
9 to you that that's someplace else?
10 ACC: That's where I was, Your Honor.
11 MJ: Okay. And Specification 2, did you actually -- when you
12 transferred the video, what was base that you did that?
13 ACC: That was at Contingency Operating Station Hammer, Your
14 Honor.
15 MJ: Okay. And was that between 14 February of 2010 and 21
16 February 2010 when you transferred the video?
17 ACC: Yes, Your Honor.
18 MJ: Does other side believe any further inquiries required?
19 TC[MAJ FEIN]: No, ma'am.
20 CDC[MR.COOMBS]: No, Your Honor.
21 MJ: Okay. Let me just ask you one thing, PFC Manning, I should
22 have asked you a little bit earlier, are you on any medications
23 today?

1 ACC: No, Your Honor.

2 MJ: Is there anything preventing you and I from having an
3 intelligent back-and-forth dialogue?

4 ACC: No, Your Honor.

5 MJ: Let's move on Specification 3 of Charge II. Specification
6 3 addresses the classified memoranda produced by a United States
7 government intelligence agency. Can you orient me to where in your
8 statement that we talk about that?

9 ACC: It's Paragraph 10 at Page 5, Your Honor. I'm sorry, 29.

10 MJ: Page 29?

11 ACC: Yes, Your Honor.

12 MJ: So, this is -- this document that we're talking about,
13 here, for Specification 3, where did you come across that?

14 ACC: I don't know if I can say, Your Honor.

15 MJ: Oh, okay, well, let's not. Was it in the T-SCIF?

16 ACC: It was, Your Honor.

17 MJ: Okay. Was it something that you were authorized to take
18 out of the T-SCIF?

19 ACC: It was not, Your Honor.

20 MJ: Okay. Did you take it out of the T-SCIF?

21 ACC: Yes, Your Honor.

22 MJ: How did you do that?

1 ACC: Using the same method -- a CD-RW or it might have been a
2 DVD-RW -- or a DVD-W, sorry -- RW.

3 MJ: Okay. And where -- when you took it out of the SCIF, where
4 did you take it?

5 ACC: To my -- to the Compartmentalized Housing Unit -- to my
6 personal area.

7 MJ: And what did you do with it?

8 ACC: I put it onto a computer -- my personal computer and I
9 uploaded it using the submission form, Your Honor -- no, the drop --
10 I used the drop box, as I ----

11 MJ: And where did you -- you used the drop box to do what?

12 ACC: To upload, Your Honor, the documents.

13 MJ: And whose drop box was it?

14 ACC: It was somebody within the WikiLeaks organization. I never
15 got a full identification as to who, but pointed me to that and it
16 resolved -- the IP address resolved to that website, Your Honor.

17 MJ: Okay. What does that mean?

18 ACC: It means that -- it -- well, the IP address that was
19 attached to that, wasn't attached to the domain name wikileaks.org if
20 I used the IP address, Your Honor.

21 MJ: Okay. So, this drop box, would that be a place where, if
22 someone wanted to send something to WikiLeaks, they would send it
23 there?

1 ACC: Yes, Your Honor, during ----
2 MJ: And then WikiLeaks would retrieve it?
3 ACC: Yes, Your Honor, they -- as they were changing something, I
4 think, they were changing how they were doing it, Your Honor.
5 MJ: Okay, because you were talking to me, before, about some of
6 the ways that you transmitted these documents was anonymous and some
7 wasn't, is that what I heard you say earlier?
8 ACC: Yes, Your Honor, well, I was -- I would -- I received over
9 the IRC and then later the Jabber -- I would ask for how do I send
10 something and then they would give me directions to where I needed to
11 send it, although I wouldn't say what it was, Your Honor ----
12 MJ: And that was the drop box ----
13 ACC: ---- that I was sending.
14 MJ: ---- that you were talking about, right?
15 ACC: Yes, Your Honor.
16 MJ: Okay. So, rather than repeat my questions for each of
17 these specifications, was -- when we talk about all of the
18 specifications, was -- when we talk about all of the specifications
19 that you're pleading guilty to today, was WikiLeaks authorized to
20 receive anything that you sent?
21 ACC: No, Your Honor.

1 MJ: Okay. And were you authorized to send anything you sent in
2 these specifications that we're talking about, that you're pleading
3 guilty to, to WikiLeaks?

4 ACC: No, Your Honor.

5 MJ: And other than the video in Specification 2, was everything
6 else classified?

7 ACC: Yes, Your Honor. Well, not everything -- for the charged
8 documents, yes, Your Honor.

9 MJ: For the charged documents?

10 ACC: Yes, Your Honor.

11 MJ: But some of the Department of State cables, I believe in
12 Specification 13 of Charge II, you testified earlier, not all of them
13 were classified, right?

14 ACC: Yes, Your Honor.

15 MJ: But the charged documents that we are talking about were?

16 ACC: Yes, Your Honor.

17 MJ: Now, with Specification 3, when you sent that -- the
18 document that we're talking about for that specification -- or the
19 two documents, did you willfully transmit those documents to
20 WikiLeaks?

21 ACC: Yes, Your Honor.

22 MJ: So you did it intentionally?

23 ACC: Yes, Your Honor.

1 MJ: Okay. And we talked earlier, you didn't have any authority
2 to do it, is that correct?

3 ACC: that is correct, Your Honor.

4 MJ: Okay. Now, I asked you about conduct -- was your conduct
5 prejudicial to good order and discipline, earlier, with respect to
6 Specification 2 of Charge II. Is your answer any different for this
7 specification?

8 ACC: Not really, Your Honor; it's a blanket statement for all of
9 the specifications under the charge.

10 MJ: So, for all the specification you are pleading guilty to,
11 the reasons that you gave me that -- so you believe -- first of all,
12 do you believe all the specifications that you're pleading guilty to,
13 that your conduct was prejudicial to good order and discipline in the
14 armed forces?

15 ACC: Yes, Your Honor.

16 MJ: And was that for the reasons we discussed when we talked
17 about Specification 2 of Charge II?

18 ACC: Yes, Your Honor.

19 MJ: Now, do you believe all of the conduct that you're pleading
20 guilty to is prejudicial -- was service discrediting?

21 ACC: Yes, Your Honor.

22 MJ: And is that for the same reason we talked about for
23 Specification 2 of Charge II?

1 ACC: Yes, Your Honor, I mean ----
2 MJ: Okay, so, if I ask you these questions for each
3 specification, are you going to give me an answer that's any
4 different than you gave me for that?
5 ACC: No, Your Honor, they're all going to be along the same
6 lines, Your Honor.
7 MJ: Okay. Was there more than one classified memorandum in
8 Specification 3 that you transmitted?
9 ACC: There were two, your Honor.
10 M: Okay. And when did you transmit that?
11 ACC: That would have been ----
12 MJ: You can look at your statement.
13 ACC: Okay. 22 March, your Honor.
14 MJ: Of what year?
15 ACC: 2010, Your Honor.
16 MJ: Okay. And for all these specifications, these
17 transmissions are -- at least for Specification 3 is also -- is it
18 Contingency Operations Station Hammer?
19 ACC: Yes, Your Honor.
20 MJ: Does either side believe any further inquiry is required
21 with respect to Specification 3 of Charge II?
22 ATC[CPT MORROW]: Your Honor, the accused stated earlier that
23 "the content of two of these documents upset me greatly. I had

1 difficulty believing what the session was discussing." It may be
2 helpful to the Court just to explore the defenses again with respect
3 to these documents.

4 MJ: Okay. Now, you looked at these documents -- your statement
5 says that the contents upset you greatly. We talked earlier about,
6 you know, to willfully communicate something, you have to be doing it
7 with a bad purpose to violate the law.

8 ACC: Correct.

9 MJ: And you talked to me earlier about that you intentionally
10 communicated these two documents. Did you know you were violating
11 the law when you did that?

12 ACC: Yes, Your Honor.

13 MJ: Okay. We also talked about, earlier, justification is
14 something that is in the proper performance of a legal duty. Did you
15 believe that you were acting in the proper performance of a legal
16 duty?

17 ACC: No, Your Honor.

18 MJ: We also talked about necessity. Do you believe, in your
19 case, that your conduct was necessary -- basically your choice of
20 evils, there, that you had to believe that your actions were
21 necessary, they must have been -- your belief must've been reasonable
22 in their must've been no other alternative to committing your crime
23 to prevent death or imminent injury.

1 Do believe that the necessity defense applies in your case?

2 ACC: Yes, Your Honor, I had a lot of alternatives.

3 MJ: Okay. Let me ask -- maybe my question was bad. Do you
4 believe the defense of necessity applies in your case?

5 ACC: No, Your Honor.

6 MJ: Okay. And you said you believed you had a lot of
7 alternatives. What other -- describe some of them for me.

8 ACC: Well, not necessarily for this-that specification, but
9 speaking generally for the other -- for two, as well, Your Honor.

10 MJ: Okay. Why don't you speak generally and just tell me what
11 alternatives you could have ----

12 ACC: Well, for -- I had the chain of command as a first
13 alternative. I could've went to the chain of command and asked for
14 guidance on how to release certain information. I had -- the public
15 affairs office was -- I knew where the public affairs office was and
16 they actually have the authority to officially release sensitive
17 information and -- I mean, there is also the Freedom of Information
18 Request -- Freedom of Information Act and other -- there were other
19 avenues to approach, Your Honor.

20 MJ: Okay. And you didn't exercise those?

21 ACC: No, Your Honor.

22 MJ: Any further inquiry?

23 TC[CPT MORROW]: No, Your Honor.

1 CDC[MR.COOMBS]: No, Your Honor.

2 MJ: All right. Let's move on, then, to Specification -- it's

3 were jumping, now, to Specification 15 of Charge II. And where in

4 your statement is that discussed?

5 ACC: Page 24, Your Honor.

6 MJ: Okay. Maybe I am confused, I thought that was

7 Specification 9? Specification 15 -- we're talking about ----

8 ACC: There was a mix-up, here, Your Honor. It's in this

9 paragraph, yes, Your Honor; Paragraph 9 -- Section 9.

10 MJ: Oh, it's in Section 9? Okay.

11 ACC: Yes, Your Honor. But its first talked about earlier on in

12 there, as well, like the contents of it Your Honor.

13 MJ: Okay where you -- where do you first begin to address it --

14 and that would be the -- it would be a classified record produced by

15 United States Army intelligence agency, dated 18 March 2008. Is that

16 the information we're talking about that specification?

17 ACC: Yes, Your Honor.

18 MJ: Okay. And where do you first address in your statement?

19 ACC: It's Section 5, Paragraph Delta, on Page 10.

20 MJ: On Page 10? Okay. All right, so were you working at the

21 T-SCIF when you were -- it says you were conducting a search to look

22 for information and you found this? Were you working in the T-SCIF?

23 ACC: Yes, Your Honor.

1 MJ: Okay. And did you -- was this information classified?

2 ACC: Yes, Your Honor, it is.

3 MJ: Okay. Did you take that information -- did you take it off

4 of where you found it and put it on a CD like you did the last two

5 pieces of information that we talked about?

6 ACC: It was a CD, yes, Your Honor.

7 MJ: Okay. And did you take it out of the T-SCIF?

8 ACC: Yes, Your Honor.

9 MJ: And where did you bring it?

10 ACC: Again to my personal housing -- my housing area and then to

11 -- LSA Dragon and then onto my personal computer, Your Honor.

12 MJ: And what did you do with it?

13 ACC: Then, I uploaded it using the drop box, again, as I

14 described, Your Honor.

15 MJ: Okay. Did you willfully and intentionally do that?

16 ACC: Yes, Your Honor.

17 MJ: Did you have authority to do it?

18 ACC: I did not.

19 MJ: And we already talked about -- you said for all of these

20 specifications WikiLeaks was not an authorized receiver of any of

21 this information. Does that apply to this too?

22 ACC: Yes, Your Honor.

1 MJ: And as we talked about earlier, was your conduct
2 prejudicial to good order and discipline and service discrediting?
3 ACC: Yes, Your Honor.
4 MJ: And for the reasons we earlier discussed or for some other
5 reason?
6 ACC: Same reasons, Your Honor.
7 MJ: And that was, once again -- was that at Contingency
8 Operating Station Hammer?
9 ACC: Yes, Your Honor.
10 MJ: And was that where you did the transmission to the drop box
11 ACC: Correct, Your Honor.
12 MJ: And that was over the Internet?
13 ACC: Yes, Your Honor.
14 MJ: What were the dates that you did that?
15 ACC: That would have been 7th through 8th of March, Your Honor.
16 MJ: So, on or about 8 March of 2010?
17 ACC: Yes, Your Honor.
18 MJ: Okay. Does either side believe any further inquiry is
19 required?
20 TC[MAJ FEIN]: May we have a moment, Your Honor?
21 MJ: Yes. Mr. Coombs, while they're having their moment, does
22 the defense believe any further inquiry is required?
23 CDC[MR.COOMBS]: No, Your Honor.

1 MJ: Okay.

2 TC[MAJ FEIN]: Ma'am, the only question the government has is if
3 the Court needed to explore the willful component for this
4 specification. I guess we still don't remember if he did it for all
5 specifications or not when you were questioning him.

6 MJ: Okay. Well, PFC Manning, let's cover that again. The -- I
7 asked you earlier if your conduct was willful, that is, intentional
8 with an intent to violate the law. Was it in this case?

9 ACC: Yes, Your Honor.

10 MJ: Okay. Did you know you are violating the law when you
11 transmitted that information?

12 ACC: Yes, Your Honor.

13 MJ: Now, is that correct for all of these specifications that
14 were going to discuss today? Did you act willfully and intentionally
15 when you transmitted all of these -- this information?

16 ACC: Yes, Your Honor, I was familiar with how we were supposed
17 to be doing -- safeguarding this information and the channels and the
18 authorities that are in place for it, yes.

19 MJ: So, for all of this information in Specifications 2, 3, 5,
20 7, 9, 10, 13, 14, and 15, did you willfully and intentionally
21 transfer this information to WikiLeaks?

22 ACC: Yes, Your Honor.

1 MJ: Did you know you were violating the law when you
2 transferred all of the information in these specifications?
3 ACC: Yes, Your Honor.
4 MJ: Okay. And when you transferred all of these -- this
5 information in these specifications I mean, we already asked this
6 question, but I'm going to ask it again: was WikiLeaks entitled to
7 receive any of it?
8 ACC: No, ma'am.
9 MJ: And for any of these specifications, was your conduct not
10 prejudicial to good order and discipline?
11 ACC: No, ma'am.
12 MJ: It was prejudicial to good order and discipline?
13 ACC: It was all prejudicial to good order and discipline, Your
14 Honor.
15 MJ: If I asked you why, what would you tell me?
16 ACC: It's prejudicial to good order and discipline, again,
17 because of the rules and regulations that were in place to safeguard
18 sensitive information, whether it be classified or not.
19 MJ: All right. Same question for service discrediting -- for
20 any of these specifications, was -- were any of these specifications
21 not service discrediting -- your conduct in transmitting these
22 documents WikiLeaks?
23 ACC: No, Your Honor.

1 MJ: And why would that be? So, it was service discrediting is
2 what you're telling me ----

3 ACC: Yes, Your Honor.

4 MJ: ---- for each of these specifications. And why would that
5 be?

6 ACC: Well, I -- again, just service discrediting -- for
7 something to be service discrediting, it has to undermine the public
8 perception as well as the service's perception of itself, Your Honor,
9 and that -- misconduct undermines that, Your Honor.

10 MJ: Okay. I guess where I'm going with this, Government -- I
11 can ask the same question for each specification, if I'm going to get
12 the same answer that we just got, I don't really see the point unless
13 you do?

14 TC[MAJ FEIN]: No, no, ma'am, not at all.

15 MJ: Okay. So, your conduct through all of these specifications
16 was -- you willfully acted to -- and you knew you were in violation
17 of the law, is that what you're telling me?

18 ACC: Yes, Your Honor.

19 MJ: And you're telling me for all of these specifications, your
20 conduct was prejudicial to good order and discipline and service
21 discrediting for the reasons you told me when we first discussed
22 Specification 2 of Charge II? Is that right?

23 ACC: That is correct, Your Honor.

1 MJ: Okay. Does either side see any need for me to ask any more
2 of those willfulness or service discrediting or prejudice to good
3 order and discipline questions with respect -- when I'm going through
4 the factual predicate for the other offenses?

5 TC[MAJ FEIN]: No, ma'am, not the general questions. The
6 government might have specific ones based off of prior -- what was
7 said in the statement per spec, but that will come up later ma'am.

8 MJ: No, my intent, now -- and this is where I want to explore
9 it with the parties -- is to go over with PFC Manning the facts
10 regarding each of the additional transmissions, but I don't intend --
11 you know, I'll ask just the leading question, "was it willful, was it
12 service discrediting, and prejudice to good order and discipline,"
13 but what I'm understanding what PFC Manning has told me is the same
14 reasons apply. All of the conduct was willful and the same reasons
15 apply for prejudice to good order and discipline and service
16 discrediting conduct as he first described to me for Specification 2
17 of Charge II.

18 TC[MAJ FEIN]: Sounds good, ma'am.

19 CDC[MR.COOMBS]: That's correct, ma'am.

20 MJ: All right. I guess now we are moving on, then, to
21 Specification 5 of Charge II. Where would I find that?

22 ACC: It's first mentioned on Page 3 and then again on Page 5,
23 Your Honor.

1 MJ: All right. And for Specification 5, we are talking about
2 more than 20 classified records from the Combined Information Data
3 Network Exchange-Iraq. Now, you spent some time talking about that
4 when you read your statement earlier in the day. Can you just
5 briefly describe what that database is?

6 ACC: Again, Your Honor, it's a database that exists -- have the
7 -- on SIPR -- on SIPRNET and it -- there's two -- I mean there's two
8 separate ones. There was one for each theater, at the time, for both
9 Iraq and Afghanistan and it holds a large amount of data that is
10 exchanged between the -- between different units within DoD and the
11 different sections of the different branches of the military -- or
12 different branches of government -- or different agencies within the
13 government, Your Honor.

14 MJ: All right. And were -- was this information found on the
15 SIPRNET computer?

16 ACC: Yes, Your Honor.

17 MJ: Was it classified?

18 ACC: Yes, Your Honor.

19 MJ: At what level?

20 ACC: Not all the information in -- contained within CIDNE is
21 classified, but the information within was often classified up to
22 Secret, Your Honor.

1 MJ: Okay. Was that information you are authorized to take out
2 of the T-SCIF?

3 ACC: No, Your Honor.

4 MJ: All right. Did you take it out of the T-SCIF?

5 ACC: Yes, Your Honor.

6 MJ: And how did you do that?

7 ACC: I -- it was -- I had already created a back-up of the
8 entire -- for both -- for a particular section of that database, the
9 Significant Activities tables and I placed them onto two separate
10 DVD-RWs -- I believe -- yeah, DVD-RWs and stored them in to the
11 conference area of the SCIF and I physically took that from the SCIF,
12 Your Honor.

13 MJ: Okay. Were there more than 20 records that you physically
14 took out the SCIF?

15 ACC: Yes, Your Honor, there were about 100, Your Honor.

16 MJ: Were there more than 20 classified records?

17 ACC: Charged records, yes, Your Honor.

18 MJ: Okay. So, the number in the charge in specification is
19 accurate, then? More than 20?

20 ACC: Yes, Your Honor.

21 MJ: Okay. And you took it out of the CD and brought it -- did
22 you bring it back to your personal computer?

23 ACC: I did, Your Honor.

1 MJ: Okay. And what did you do with it?

2 ACC: I took the information and I uploaded it, again -- I mean,
3 this was the first thing that I ever uploaded to the WikiLeaks
4 website. I uploaded it using their submission form.

5 MJ: So, this was -- out of all of these specifications, even
6 though it's in middle in Specification 5, this was the first time you
7 uploaded to WikiLeaks, is that correct?

8 ACC: Correct, Your Honor.

9 MJ: Okay. Did you do the Afghanistan database at the same time
10 or a different time?

11 ACC: They were -- yes, they -- I -- they were on -- they were
12 both on the same DVD-RW that I took from the conference room of the
13 SCIF.

14 MJ: Okay. Well, let's talk about Specification 5 and
15 Specification 7 together, then. Did you -- you downloaded the
16 Afghanistan and Iraq CIDNE databases at the same time or ----

17 ACC: It was sequential. So, I got Iraq first and then I
18 downloaded Afghanistan, Your Honor.

19 MJ: Okay. Was it on the same CD?

20 ACC: Yes, it should have been on the -- I labeled the CD "CIDNE
21 SIGACTs," Your Honor.

22 MJ: Okay. Now, Specification 7 also says "more than 20
23 classified records." Are the records -- did you download more than

1 20 classified -- or is it more than 20 records from the Afghanistan
2 database to your CD also?

3 ACC: Yes, Your Honor.

4 MJ: Were there more than 20 classified records?

5 ACC: Yes, Your Honor.

6 MJ: Okay. So, did you take the Afghanistan records and the
7 Iraq database records out of the T-SCIF together on one CD?

8 ACC: Yes, Your Honor.

9 MJ: Okay. And you said -- you testified you went back to your
10 personal computer and uploaded it?

11 ACC: Well, I copied -- this wasn't immediately, no.

12 MJ: Okay.

13 ACC: This was -- I copied it onto -- I copied it onto my
14 personal computer and then I put it onto -- it's like a little SD
15 card for cameras. So, I didn't have it on the laptop anymore, but I
16 could put it on there. And then I took the actual CD that I took it
17 from back into the SCIF and I set it back in the conference room.

18 MJ: Okay. So, once you have this on that -- what did you call
19 it? The ----

20 ACC: SD card.

21 MJ: The SD card -- you said in your camera?

22 ACC: Yes, Your Honor. Digital camera.

23 MJ: All right. What did you do with it then?

1 ACC: I took it with me on my mid-tour leave to my ----
2 MJ: And this is when you went to your aunt's house and then you
3 went up to Massachusetts and then you came back and got stuck in the
4 blizzard?
5 ACC: Yes, Your Honor, but I didn't bring my camera case with me
6 to Massachusetts.
7 MJ: Okay. So, you -- but you did bring your camera case with
8 that SD card to your aunt's house?
9 ACC: Yes, Your Honor.
10 MJ: And that was in Maryland?
11 ACC: Yes, Your Honor.
12 MJ: And did you -- what did you do with that information -- or
13 SD card at your aunt's house?
14 ACC: I -- after deciding what I was going to do with it, I
15 eventually put it on to a -- put it on -- back on to my laptop and I
16 uploaded it -- I uploaded it to the WikiLeaks website at some point
17 during my mid-tour leave, Your Honor.
18 MJ: So, when you were ----
19 ACC: At the end -- towards the end.
20 MJ: When you uploaded the Iraq and Afghanistan databases to the
21 WikiLeaks website, were you in Contingency Operating Station Hammer,
22 Iraq or were you at your aunt's house in Maryland?
23 ACC: I think I was actually at a Barnes & Nobles, Your Honor.

1 MJ: In -- I assume there's no Barnes & Nobles in Contingency
2 Operating Station Hammer, Iraq, so would this be in Maryland?

3 ACC: Yes, Your Honor, this was Rockville, Maryland.

4 MJ: Rockville, Maryland?

5 ACC: Or it could have been North Bethesda; it's right between
6 the two, Your Honor.

7 MJ: All right. Mr. Coombs, I don't believe that the plea by
8 exceptions and substitutions changed the location, did it?

9 CDC[MR.COOMBS]: The way that it -- and I covered this with my
10 client -- the way we looked at the location, ma'am, was that's where
11 he had the unauthorized possession of it and the actual disclosure of
12 it was in the United States. However, the way the specification is,
13 he has the unauthorized possession at or near Contingency Operation
14 Station Hammer, Iraq. I've discussed with him that the actual
15 disclosure was in the United States. Looking at it, I did not
16 believe that would require us to do exceptions and substitutions for
17 the location, however I have covered that with my client and the
18 defense is prepared to enter, by exceptions and substitutions, if the
19 Court believes that's warranted.

20 MJ: Well, reading it here that Contingency Hammer Station,
21 Iraq, that you had unauthorized possession. Just to make the --
22 Specification 5 and 7 clear -- are those -- first of all, PFC
23 Manning, are those the only specifications -- Specifications 5 and 7

1 of Charge II, where you transmitted the data from Barnes & Noble in
2 Maryland or anywhere in Maryland?

3 ACC: Yes, Your Honor.

4 MJ: Okay. So all of the other transmission were done from
5 Contingency Operating Hammer, Iraq?

6 ACC: Correct, Your Honor.

7 MJ: Well, I'm thinking it might just be prudent to say ----

8 CDC[MR.COOMBS]: Just put an "and" in ----

9 MJ: For the -- well, you're not really excepting words, though,
10 there, you're adding words.

11 CDC[MR.COOMBS]: Correct, Your Honor, so we would not object to
12 adding -- when you look at "at or near Contingency Operation Station
13 Hammer, Iraq" and just putting the "and" -- conjunction "and
14 Maryland" -- in this case, it would be Rockville, Maryland, United
15 States adding that to both Specifications 5 and 7.

16 MJ: All right. Government, do you have any objection if the
17 defense modifies their plea?

18 TC[MAJ FEIN]: Ma'am, it might be even easier -- we could just
19 amend it also -- the actual charge sheet for those two specs.

20 MJ: All right. So, I assume if the government is going forward
21 with the greater offense, that the government is going forward with
22 those locations as well, is that correct?

1 TC[MAJ FEIN]: Well, the greater offense -- it would be a common
2 element of a greater offense anyways, Your Honor, so, yes.

3 MJ: Okay. Well, this is a good time for a brief recess anyway,
4 so why don't we go ahead and take a recess and then you all discuss
5 how you want to move ahead and just come see me before we call the
6 court back to session and let me know what you decide to do.

7 TC[MAJ FEIN]: Yes, Your Honor.

8 MJ: How long would you like?

9 TC[MAJ FEIN]: Can we go at 1530, ma'am?

10 MJ: All right. The court is in recess until 1530.

11 **[The Article 39(a) session recessed at 1515, 28 February 2013.]**

12 **[The Article 39(a) session was called to order at 1542, 28 February**
13 **2013.]**

14 MJ: This Article 39(a) session is called to order. Let the
15 record reflect that all parties present when the court last recessed
16 are again present in court.

17 Government has what has happened with the charge sheet?

18 TC[MAJ FEIN]: Yes, ma'am, the parties discussed this issue,
19 ma'am, and the United States, I guess, has amended, with the
20 concurrence of the defense, the two charges, Specification 5 and 7,
21 of a copy of the original charge sheet which will now become the new
22 original. Specification 5 has been amended to say, "In that Private
23 First Class Bradley E. Manning, U.S. Army, did, at or near

1 Contingency Operating Station Hammer, Iraq and at or near Rockville,
2 Maryland," and then the remaining portion. And then the same
3 amendment has occurred in Specification 7, Your Honor.

4 MJ: All right. Defense, do you have any objection to this
5 amendment?

6 CDC[MR.COOMBS]: No, Your Honor.

7 MJ: PFC Manning, have you had an opportunity to look at the
8 amended charge sheet?

9 ACC: Yes, Your Honor.

10 MJ: Do you have any objections to it?

11 ACC: No, Your Honor.

12 MJ: Okay. It was amended, basically, based on yours and my
13 dialogue and what you have in your statement to be factually correct.

14 ACC: Yes, Your Honor.

15 MJ: Okay. Now, Government, normally, after someone has been
16 arraigned, we don't normally -- the original charge sheet is supposed
17 to stay the same. So, do it one of two ways: either put the
18 original charge sheet back in the record somehow ----

19 TC[MAJ FEIN]: Ma'am, it was fortuitous that we did not have the
20 original charge sheet, so it will remain in the record with this
21 amended charge sheet on top of it.

22 MJ: Okay. Great. And the amended words are "at or near
23 Contingency Hammer Station [sic], Iraq and at or near Rockville,

1 Maryland," for Specifications 5 and 7 of Charge II. Is that the
2 parties' understanding?

3 CDC[MR.COOMBS]: Yes, Your Honor.

4 TC[MAJ FEIN]: Yes, Your Honor.

5 MJ: All right. Is there anything else I need to address with
6 this issue?

7 CDC[MR.COOMBS]: No, Your Honor.

8 TC[MAJ FEIN]: No, Your Honor.

9 MJ: Okay. PFC Manning, as we discussed, the charge sheet was
10 amended based on yours and my discussion with respect to these two
11 specifications and, as I understand what you told me on what's in
12 your statement, you got the Iraq and Afghanistan databases from the
13 T-SCIF at Contingency Operating Base Hammer in Iraq ----

14 ACC: Yes, Your Honor.

15 MJ: ---- you put them on your CDs -- or your CD, brought it
16 home -- brought it back to your CHU -- your personal computer ----

17 ACC: CHU.

18 MJ: ---- at the CHU and then you -- Containerized Housing?
19 What's the ----

20 ACC: Containerized Housing.

21 MJ: Containerized Housing Unit? Okay. It's been a while.

22 Okay. So, then, you uploaded that onto the CD -- or the SD card in
23 your camera and then you brought that back to Maryland? Is that my

1 understanding of your testimony? And then in a Barnes & Noble
2 somewhere near Rockville, Maryland, you transmitted that data to
3 WikiLeaks?

4 ACC: Yes, Your Honor.

5 MJ: Okay. And, once again, you've already been asked the
6 willful questions, did you do -- did you transmit that data -- the
7 Iraq and Afghanistan databases to WikiLeaks willfully as well?

8 ACC: Yes, Your Honor.

9 MJ: And was your conduct prejudicial to good order and
10 discipline and service discrediting?

11 ACC: Yes, Your Honor.

12 MJ: And would that be for the same reasons you told me before
13 or something different?

14 ACC: Yes, Your Honor, the same reasons, Your Honor.

15 MJ: Okay. Does either side believe any further inquiry is
16 required with respect to Specifications 5 or 7?

17 TC[MAJ FEIN]: Yes, ma'am, based off of Page 14, what has been -
18 - it is based off Private First Class Manning's statement, but Page
19 14, Paragraph J, at the bottom. The United States believes that
20 further inquiry into the potential defenses of necessity and
21 justification for these specific specifications, Your Honor.

22 MJ: Okay. Look at Page 14, there, at -- Paragraphs I and J.
23 It talks about -- that you began to get depressed with the situation.

1 Now, was it -- when you got depressed with the situation, that was
2 when you were in Maryland after you'd already taken these databases,
3 is that correct?

4 ACC: It's more of a general, broad feeling that I had over a
5 period of time, Your Honor.

6 MJ: Okay. Now, was that -- when you took these databases out
7 of Iraq and you took them back home with you on leave, as I
8 understand your statement, were you still deciding what you were
9 going to do with them?

10 ACC: Yes, Your Honor, I was looking at different -- and trying
11 to figure out different people that I could possibly give this to,
12 Your Honor.

13 MJ: Did you plan to ----

14 ACC: I didn't know how ----

15 MJ: ---- give it to somebody or -- had you already made that
16 decision that you were going to give it to somebody?

17 ACC: Yes, Your Honor. Before I left Iraq, I knew I was going to
18 probably give it to some news organization, Your Honor.

19 MJ: You just -- at that point -- so, you left Iraq, did you
20 know which news organization you're going to give it to?

21 ACC: My preference would have been the Washington Post, Your
22 Honor.

1 MJ: Okay. And I remember your statement, earlier -- I think --
2 were these the -- was this the information you were trying to give to
3 the Washington Post?

4 ACC: Yes.

5 MJ: Or was that something different?

6 ACC: Yes, Your Honor, that was the way it started out, Your
7 Honor.

8 MJ: Okay. So, that's what's on 15 of your statement, then?
9 You just tried to do it -- to give it to the Washington Post, you
10 talked to somebody there and they said, well, they might be
11 interested but they have to see it first?

12 ACC: Yes, Your Honor, and I never went down, physically, to
13 there but I thought of -- I considered actually going to the
14 Washington Post downtown, Your Honor.

15 MJ: And, at some point, did you make a decision that that
16 wasn't a good idea?

17 ACC: I was nervous, Your Honor, yes.

18 MJ: Okay. And then did you -- what was the next thing you were
19 thinking about doing?

20 ACC: I thought about -- well, after, I made a phone call -- I
21 made a few phone calls -- I made at least one phone call to the
22 Washington Post and then I called the New York Times and sort of got
23 the same response. And then I also thought about going -- there's

1 Allbritton Communications Office where Politico operates and I
2 thought about going down there, Your Honor.

3 MJ: Okay. And, ultimately, what decision did you make?

4 ACC: By -- with time running out on my mid-tour leave, I decided
5 that I was going to upload it to the WikiLeaks website before I lost
6 a good Internet connection -- before I lost a really strong broadband
7 Internet connection, Your Honor.

8 MJ: Did you need a really strong broadband to transmit that
9 data?

10 ACC: Yes, Your Honor.

11 MJ: Okay. And is that why you went to Barnes & Noble?

12 ACC: There was a blizzard as well, so we lost our -- at the
13 house, we lost our heating and our Internet access. We still had
14 some power, though, Your Honor.

15 MJ: Okay. So, you -- did you actually transmit those -- the
16 Iraq and Afghanistan databases from Maryland to WikiLeaks?

17 ACC: Yes, Your Honor.

18 MJ: Okay. Now let's go back to Page 14 where it says you
19 became depressed at the situation. What situation -- are you talking
20 about the situation in Iraq and Afghanistan?

21 ACC: Yes, Your Honor.

22 MJ: Okay. And remember we talked earlier about -- I believe
23 that you're--also, here, in Paragraph J, you said you released this

1 information to spark a debate. Were you authorized to release this
2 information to spark a debate?

3 ACC: No, Your Honor, I was not.

4 MJ: Okay. When it talks about you being depressed about this -
5 - we went over the defenses of justification and necessity. Earlier,
6 I defined them for you. Do you want me to redefine them for you?

7 ACC: No, Your Honor.

8 MJ: Okay. Do you believe that either justification or
9 necessity -- those defenses apply in your case?

10 ACC: No, Your Honor, not for that.

11 MJ: Why not?

12 ACC: It's just a general feeling; it wasn't a depression
13 depressed, it was just a general feeling of what was going on was not
14 good, generally so.

15 MJ: Well, if -- even if -- and remember, we talked about self-
16 help, before, and ----

17 ACC: Right.

18 MJ: ---- even if you, personally, believed maybe you weren't in
19 favor of some of the policies that were going on for some of the
20 things that were happening in Iraq and Afghanistan, do you believe
21 that that gave you the authority to go ahead and download these
22 databases and then bring them to Maryland and transmit them to
23 WikiLeaks?

1 ACC: Correct, Your Honor.

2 MJ: Do you believe it gave you authority to do that?

3 ACC: No, Your Honor.

4 MJ: Okay. So, in the military, in the chain of command

5 structure, if -- or in the government structure in general, if

6 someone disagrees with policies that are made by senior people more

7 senior to them in charge of making those policies, are you allowed

8 just to take self-help and violate the rules and give somebody

9 classified information?

10 ACC: No, Your Honor.

11 MJ: Okay. Now, let's talk a little bit about -- you said you

12 became depressed -- you said you weren't -- you were depressed, but

13 not "depressed" depressed. Tell me what that means?

14 ACC: I wasn't like -- for -- that general feeling I'm describing

15 is not attached to depression as a mental issue, although -- so I'm

16 not raising that for that portion, Your Honor. For that paragraph.

17 MJ: Okay. Well, let's talk a little bit about that because

18 this is during the period of time when you were in Contingency

19 Operating Station Hammer and back at Fort Drum, too, you had received

20 some mental health treatment for anxiety issues ----

21 ACC: Yes.

22 MJ: ---- is that correct?

23 ACC: Yes, Your Honor.

1 MJ: And that's come through when we talked about the Article 13
2 motion and a little bit in the speedy trial even. Have you gone over
3 with Mr. Coombs the defense of lack mental responsibility or lack of
4 *mens rea* due to partial mental responsibility?

5 ACC: Yes, Your Honor, we have.

6 MJ: Okay. Mr. Coombs, have you gone over that with PFC
7 Manning?

8 CDC[MR.COOMBS]: I have, Your Honor.

9 MJ: There has been an R.C.M. 706 board in this case, right?

10 CDC[MR.COOMBS]: That is correct, Your Honor.

11 MJ: And actually a pretty extensive one?

12 CDC[MR.COOMBS]: Yes, Your Honor.

13 MJ: When the board came back, what were the short-form results?

14 CDC[MR.COOMBS]: The short form indicated that he was not
15 suffering from a lack of mental responsibility, either at the time of
16 the incident or presently.

17 MJ: Was he suffering from a serious mental disease or defect at
18 that time?

19 CDC[MR.COOMBS]: No, Your Honor.

20 MJ: Okay. These offenses all require a willful intent. So,
21 before we -- so, Mr. Coombs, am I hearing from you, then, you fully
22 explored the issue of lack of mental responsibility?

23 CDC[MR.COOMBS]: That is correct, Your Honor.

1 MJ: Okay. And do you believe there's anything else left to
2 explore with respect to that issue?

3 CDC[MR.COOMBS]: No, Your Honor.

4 MJ: All right. PFC Manning, do you agree with that?

5 ACC: I agree, Your Honor.

6 MJ: Okay. Now, let's talk about the willful aspect of these
7 specifications. Mr. Coombs, have you fully investigated the issue of
8 whether PFC Manning suffered from a mental disease or defect or
9 impairment or condition or character behavior disorder that prevented
10 him from forming -- or basically willfully acting in this case?

11 CDC[MR.COOMBS]: I have, Your Honor.

12 MJ: Okay. And what were your conclusions from ----

13 CDC[MR.COOMBS]: That he was not, Your Honor.

14 MJ: All right. PFC Manning, do you agree with that?

15 ACC: Yes, Your Honor.

16 MJ: Okay. Now, did Mr. Coombs -- or did your defense team
17 explain to you that partial lack of mental responsibility can negate
18 the intent required for offenses we call "specific-intent" or
19 "knowledge" offenses?

20 ACC: Yes, Your Honor, we have.

21 MJ: Okay. So, this willful intent falls within that? Okay.
22 So, at the time you made these transmissions, were you seeing mental
23 health professionals at that time?

1 ACC: I had seen one a few weeks before, yes, Your Honor.

2 MJ: Okay. Were you on any medications?

3 ACC: No, Your Honor.

4 MJ: So, was there any -- so you were not on any medications at
5 the time?

6 ACC: That is correct.

7 MJ: And did you continue to perform your military -- was there
8 anything about your state of mind that made you unable to perform
9 your military duties at that time?

10 ACC: No, Your Honor.

11 MJ: So, you're going to work and going home just like everybody
12 else?

13 ACC: Yes, Your Honor.

14 MJ: Were you acting differently than you normally act during
15 that period of time? I mean, was there anything strange that you
16 noticed about your mental health behavior?

17 ACC: Trouble sleeping, that's it, Your Honor.

18 MJ: So, do you believe that you were fully capable of acting
19 willfully in making these communications?

20 ACC: Yes, Your Honor.

21 MJ: Do you believe you were of sound mind when you did that?

22 ACC: Yes, Your Honor.

1 MJ: Does either side believe any further inquiry is required
2 with respect to mental responsibility or partial mental
3 responsibility?

4 TC[MAJ FEIN]: Yes, ma'am, just maybe a little bit more -- and
5 if the Court remembers and we can get these for the Court if needed -
6 - the Master Sergeant Adkins memos, they used some pretty specific
7 details -- I'm not asking the Court to go through that, but some
8 behaviors that were going on concurrent with the charged misconduct
9 that might just be -- they're already on the record to be explored
10 and make sure that doesn't necessarily go to the willful aspect
11 either.

12 MJ: I don't ----

13 TC[MAJ FEIN]: I'm sorry, Your Honor, the question, just now, to
14 Private First Class Manning was: "Was there any mental condition at
15 the time that would have affected the *mens rea*, essentially" -- that
16 -- there's documentation that there could have been, so just
17 exploring whether that mental -- his state of mind at that time would
18 have affected the charged misconduct.

19 MJ: All right, I don't have the Adkins documents in front of
20 me. What we can do is -- can someone make a Xerox copy of them and
21 give them to me and ----

22 TC[MAJ FEIN]: We can keep going, Your Honor, and we'll get
23 that.

1 MJ: ---- we'll keep going and if you can make that happen,
2 we'll come back to that.

3 TC[MAJ FEIN]: Yes, ma'am.

4 MJ: Okay. So, PFC Manning, we're going to put that piece of
5 the discussion -- table it for a little while and then continue on,
6 here.

7 ACC: Yes, Your Honor.

8 MJ: All right. So any further questions with respect to
9 Specifications 5 and 7 of Charge II?

10 TC[MAJ FEIN]: No, ma'am.

11 CDC[MR.COOMBS]: No, Your Honor.

12 MJ: All right. Let's move on to Specification 9 of Charge II.
13 Where would I find that in your statement?

14 ACC: Page 24, Your Honor.

15 MJ: Now, Specification 9 of Charge II involves more than three
16 classified records from the United States Southern Command database.
17 What are those records?

18 ACC: They are Detainee Assessment Briefs, Your Honor.

19 MJ: Okay. And what is that?

20 ACC: They are documents that, generally, outline and describe
21 detainees that were held at Joint -- Joint Task Force Guantánamo,
22 Your Honor.

23 MJ: Okay.

1 ACC: Held under.

2 MJ: Where did you find these documents?

3 ACC: These were on a U.S. Southern Command portal, Your Honor.

4 MJ: And was that portal on SIPRNET?

5 ACC: Yes, Your Honor.

6 MJ: Where they -- where these documents classified?

7 ACC: Yes, Your Honor.

8 MJ: Okay. And what did you do with these documents -- and were

9 there more than three of them?

10 ACC: There were five, I think, Your Honor -- or charged, Your

11 Honor.

12 MJ: All right. And what did you do with them?

13 ACC: I -- as I was downloading I mean, as I was going through

14 some things, I segregated them some of them and went through them and

15 then I downloaded them -- or I downloaded all of them that I could

16 and then I put them onto a CD and they took them to my housing unit

17 and put it into -- put it onto my personal laptop and uploaded it

18 using the drop box that I described, Your Honor.

19 MJ: Okay. Now, your statement talks about getting an

20 interpreter and all of that -- what happened there?

21 ACC: That was a separate -- that's a separate incident that

22 happened, but it made me sort of look into detainments as a whole

23 after some detainees were found at -- down in the Karada Peninsula of

1 Baghdad -- the Federal Police -- it was a joint operation in which 15
2 detainees were, basically, taken into the -- and they were turned
3 over to the FPs and -- at the -- and going -- and I was assigned to
4 do some research into this matter and it got me thinking about
5 detainments and things, Your Honor.

6 MJ: Okay. So you said it got you thinking about detainments
7 and is that why you took those records out of the SCIF?

8 ACC: Is one of the reasons that I found them and -- I found them
9 again and then, after reviewing them, then I took them, Your Honor.

10 MJ: All right. In this particular case, with these records, do
11 you think that there was -- was your conduct willful?

12 ACC: Yes, Your Honor.

13 MJ: Did you know you are violating the law when you gave those
14 records -- when you took them out -- the classified records out of
15 the T-SCIF, put them on your personal computer, and transmitted them
16 to WikiLeaks?

17 ACC: Yes, Your Honor.

18 MJ: And you did transmit those to WikiLeaks, too?

19 ACC: To the drop box that was associated with them, yes, Your
20 Honor.

21 MJ: Okay. We talked about justification and necessity before.
22 Do you think that you had any -- you have any justification or
23 necessity defense with respect to these records?

1 ACC: No, Your Honor.

2 MJ: Okay. Why not?

3 ACC: I knew that I was -- I knew I was doing and I knew that I
4 was breaking the rules and not going by the regulations, Your Honor.

5 MJ: When you are submitting these detainee assessments -- I
6 mean, you weren't doing -- were you doing that to save somebody in
7 imminent danger at that time?

8 ACC: No, Your Honor, nobody was in imminent danger.

9 MJ: And was it a part of your official military duties?

10 ACC: No, Your Honor, it was not.

11 MJ: Does either side believe any further -- well, first of all,
12 was it -- was your conduct prejudicial to good order and discipline
13 and service discrediting?

14 ACC: Yes, Your Honor.

15 MJ: And was that for the same reasons we talked about before or
16 different reasons?

17 ACC: The same reasons, Your Honor.

18 MJ: And when did you make this transmission to WikiLeaks of
19 these documents?

20 ACC: This was 8 -- it was -- I downloaded them and took them on
21 the 7th of March; it was the election for Iraq and then the day after
22 is whenever I uploaded them, Your Honor.

1 MJ: And then were you authorized to transmit those documents to
2 WikiLeaks?

3 ACC: No, Your Honor.

4 MJ: And were they entitled to receive them?

5 ACC: No, Your Honor.

6 MJ: All right. Does either side believe any further inquiries
7 required with respect to Specification ----

8 TC[MAJ FEIN]: Can we have a moment, Your Honor?

9 MJ: Yes.

10 CDC[MR.COOMBS]: Nothing from the defense, Your Honor.

11 ATC[CPT MORROW]: Your Honor, I just refer the parties and the
12 Court to Page 26, Paragraphs M and N. It may be beneficial for the
13 Court to explore the answers with respect to prejudicial to good
14 order and discipline with the statement made in those two paragraphs.

15 MJ: All right. Look at page -- Paragraphs M and N in your
16 statement.

17 ACC: Yes, Your Honor.

18 MJ: When it talks about, here, that you'd always been
19 interested in the moral efficacy of the actions in JTF-GTMO and you
20 always understood the need to detain and interrogate individuals who
21 might harm the United States and allies, and you felt that that's
22 what we're trying to do at JTF-GTMO, but then, as you became educated
23 on the topic, you believed that the United States was holding an

1 increasing number of individuals indefinitely that we -- that you
2 believed were innocent, low-level foot Soldiers that didn't have
3 useful intelligence who would be released if they were still held in
4 theater and, then, that you remember back in early 2009, the newly
5 elected president, Barack Obama, said he would close JTF-GTMO and the
6 facility compromised our standing in the world and diminished our
7 moral authority and after you familiarized yourself with the DABs,
8 that you agreed.

9 Now, even if -- this is kind of -- what you're saying is
10 that you had your own personal, noble motive in doing what you did.
11 Do you believe -- and you also testified that you believed that this
12 conduct is service discrediting in prejudicial to good order and
13 discipline. How can that coexist?

14 ACC: Your Honor, it's -- regardless of my opinion on -- or my
15 assessment on documents such as this -- you know it's beyond my pay
16 grade, it's not my authority to make these decisions and there are --
17 again, there are channels that you are supposed to go through and I
18 didn't even look at the possible channels of doing -- having this
19 information released properly. So, that's not how we do business
20 Your Honor, and it's so ----

21 MJ: So, my understanding -- your testimony -- are you telling
22 me that even though you, personally, have a disagreement with how
23 policy was being formed and implemented, that your conduct, to

1 further your personal goals, could still be prejudicial to good order
2 and discipline and service discrediting conduct?

3 ACC: Yes, Your Honor, and, just clarify, I mean -- for the
4 policy standpoint, it's not necessarily my issues with the policies
5 that were the driver, it was my concerns about not -- about the lack
6 of openness about the policies, Your Honor. But, regardless my
7 opinions on those, again, I don't have the authority.

8 MJ: Okay. It was the fact that you acted without that
9 authority -- is that what made your conduct prejudicial to good order
10 and discipline?

11 ACC: Yes, Your Honor.

12 MJ: Was that when made your conduct service discrediting?

13 ACC: What made my service discrediting is the fact that these --
14 the public sees this -- sees that these documents have been released
15 and then you know, it damages their perception and their feeling
16 about whether the armed services, as a whole, can safeguard
17 information at all.

18 MJ: All right. Does the government have any -- desire any
19 further inquiry?

20 TC[MAJ FEIN]: No, Your Honor.

21 MJ: All right. Let's move on to Specification 10. Where am I
22 in your statement?

23 ACC: Page 33, Your Honor.

1 MJ: All right, Specification 10 involves more than five
2 classified records relating to a military operation in Farah
3 Province, Afghanistan occurring on or about 4 May of 2009. Now, did
4 you have -- acquire unauthorized possession of, access to, or control
5 over more than five classified records relating to that military
6 operation?

7 ACC: Yes, Your Honor.

8 MJ: And where did those records come from?

9 ACC: Those records came from the U.S CENTCOM portal under their
10 Judge Advocate General folder.

11 MJ: Was that from the SIPRNET computer too?

12 ACC: Yes, Your Honor.

13 MJ: And were those more than five records classified?

14 ACC: Yes, Your Honor.

15 MJ: Okay. And what did you do -- what did they involve ----

16 ACC: They ----

17 MJ: ---- that you can tell me?

18 ACC: They reference an event that occurred in 2009, Your Honor,
19 in which they were -- there are reports of civilian casualties at an
20 event.

21 MJ: Okay. And when you came across this information, was it a
22 15-6 investigation or did that include a 15-6 investigation?

1 ACC: It might have been 15-6 -- I think it was DoD that -- it
2 was under DoD, but I don't remember if -- whether it was the Army
3 regulation that they went by or not, Your Honor.

4 MJ: Was there some kind of investigation into this incident
5 that you're talking about?

6 ACC: It was at least a 15-6-type investigation, Your Honor.

7 MJ: Are those the records that you took, or did you take some
8 different ones?

9 ACC: And the supporting annexes and supplements and things like
10 that, Your Honor.

11 MJ: Okay. So, that's what you -- did you download that from
12 the SIPRNET onto something?

13 ACC: Yes, Your Honor.

14 MJ: What something was it?

15 ACC: First, my work computer, then a CD-RW and then I uploaded -
16 - and then I placed that onto my personal computer in the CHU and
17 uploaded that sometime later, Your Honor, a few days later at least.

18 MJ: So, the specification has the time frames of between on or
19 about 10 April 2012 and 12 April -- 10 April 2010, excuse me, and 12
20 April 2010. Are those the accurate dates?

21 ACC: Yes, Your Honor.

22 MJ: Those are the dates that you downloaded that information
23 and then you gave it to WikiLeaks?

1 ACC: Yes, Your Honor, so it would have been 11 April of 2010.

2 MJ: You talked about something -- you didn't use the TOR

3 anonymizer? I think I'm pronouncing this right.

4 ACC: It's anonymizer.

5 MJ: Anonymizer? Okay, we'll get there. So, what did you use?

6 ACC: I used a new version of the form that was up on the website

7 because they changed the website -- how they had the website set up

8 and I just used a new version of that and it had like a bar in which

9 you could see how far it was downloaded and you didn't have to use

10 the annoymer, Your Honor.

11 MJ: Okay. Did you act willfully?

12 ACC: I did, Your Honor.

13 MJ: Did you know you were violating the law?

14 ACC: Yes, Your Honor.

15 MJ: Did you -- was your conduct prejudicial to good order and

16 discipline?

17 ACC: Yes, Your Honor.

18 MJ: Was it service discrediting?

19 ACC: Yes, Your Honor.

20 MJ: For the same reasons we talked about before, or for

21 different reasons?

22 ACC: For the same reasons, Your Honor.

1 MJ: Does either side believe any further inquiry is required
2 with respect to Specification 10?

3 TC[MAJ FEIN]: Could we have a moment, Your Honor?

4 MJ: Yes.

5 CDC[MR.COOMBS]: The defense does not, Your Honor.

6 ATC[CPT MORROW]: Your Honor, just briefly, I think, but on Page
7 33, Paragraph B. Again, it might be helpful for the Court to explore
8 service discrediting and PGOD aspect to this as compared to what's in
9 the statement.

10 MJ: All right. PFC Manning, well, first of all, just before we
11 even get there, you weren't authorized to take any of this
12 information out of the SCIF, were you?

13 ACC: No, I was not, Your Honor.

14 MJ: Okay. So, were you authorized to load it on your personal
15 computer?

16 ACC: No, Your Honor.

17 MJ: Were you authorized to transmit it to WikiLeaks?

18 ACC: No, Your Honor.

19 MJ: Were they cleared to receive it?

20 ACC: No, Your Honor.

21 MJ: Now, looking at Page 33, here, it talks about, in
22 Paragraphs A and B that this information -- you said it was reported

1 in the press, here, that's up to 100 to 150 Afghan civilians were
2 accidentally killed?

3 ACC: That was just the press, Your Honor.

4 MJ: Okay. So, you transmit this information to WikiLeaks --
5 why?

6 ACC: What was that, Your Honor?

7 MJ: Why did you transmit this information to WikiLeaks?

8 ACC: I felt -- I mean -- I just felt that the report was
9 different than -- I felt that there were things within the report
10 that might help enlighten the general public of what happened and how
11 it happened.

12 MJ: Okay. And this report was classified at the time, is that
13 correct?

14 ACC: Yes, Your Honor, it was, Your Honor.

15 MJ: All right. And, at least in accordance with the people
16 that had authority to classify this report, nobody with authority to
17 classify this report had made a determination that it should be
18 unclassified and disseminated to the general public, is that correct?

19 ACC: That is correct, Your Honor.

20 MJ: Okay. Now, we talked earlier about, sort of, the
21 difference that even though you think something is a good idea, that
22 the people who are authorized to make those choices don't think
23 that's a good idea, and you act in accordance with your personal

1 idea, that that conduct can be prejudicial to good order and
2 discipline.

3 ACC: Certainly, Your Honor, yes.

4 MJ: Do you think, in this case, that that's true?

5 ACC: Yes, Your Honor.

6 MJ: Okay. And for the same reasons we talked about before?

7 ACC: Yes, Your Honor.

8 MJ: And what about service discrediting conduct? If you
9 personally think that you're doing something for the greater good,
10 but the people with the authority to make those decisions hadn't made
11 the same decision you did, do you think that your conduct can still
12 be service discrediting?

13 ACC: Yes, Your Honor.

14 MJ: Do you think it was service discrediting in this case?

15 ACC: Yes, Your Honor it was.

16 MJ: And for this specification as well?

17 ACC: For this specification, yes.

18 MJ: Okay. And for different reasons or reasons we talked about
19 earlier?

20 ACC: For the same reasons.

21 MJ: All right. Government, anything else?

22 TC[MAJ FEIN]: No, Your Honor. Also, Your Honor, the government
23 has a copy of the Adkins memos, although, after reviewing the memos,

1 the inquiry that the Court already had about the extensive R.C.M. 706
2 board and findings the board should cover this material; it's
3 probably not needed.

4 MJ: All right. I'm just going to do -- I don't need to see the
5 material, but, PFC Manning, there were a couple of incidents around
6 the time you were making these disclosures where there was maybe a
7 little bit of outburst behavior. How did that impact your -- did
8 that impact your mental state, in any way, when you were making these
9 decisions to willfully disclose this classified information?

10 ACC: No, Your Honor.

11 MJ: Okay. Were you of -- I mean, was your mind clear when you
12 are making these decisions?

13 ACC: Yes, Your Honor.

14 MJ: Okay. Do you think that there was anything that was
15 influence -- that was of any kind of mental health issue or mental
16 condition that was influencing your decisions to transmit these
17 documents willfully?

18 ACC: I think I had some issues, but I don't think it would
19 impact my performance or my ability to perform my duties, Your Honor,
20 so, no.

21 MJ: All right. Any further inquiry?

22 TC[MAJ FEIN]: No, ma'am.

23 MJ: Okay. Mr. Coombs?

1 CDC[MR.COOMBS]: No, Your Honor.

2 MJ: All right. Lastly, for this charge and specification,
3 let's talk about -- oh, we already talked about Specification 15,
4 didn't we? All right.

5 ACC: Yes, Your Honor.

6 MJ: Any other remaining specifications for charges under 18 --
7 the lesser included offenses for 18 United States Code, Section
8 793(e)?

9 TC[MAJ FEIN]: No, ma'am.

10 CDC[MR.COOMBS]: No, Your Honor.

11 MJ: All right. PFC Manning, do you admit that, at or near
12 Contingency Operation Station Hammer, Iraq, and for Specifications 5
13 and 7, also, at or near Rockville, Maryland, for Specification 2,
14 between on or about February 2010 [sic] and 21 February 2010, you,
15 without authorization, had possession of, access to, or control over
16 a video file named, "12 Jul 07 CZ Engagement Zone 30GC anyone.avi"?

17 ACC: Yes, Your Honor.

18 MJ: Do admit, for Specification 3 of Charge II, that between on
19 or about 17 March 2010 and 22 March 2010, you, without authorization,
20 had possession of, access to, or control over more than one
21 classified memorandum produced by a United States government
22 intelligence agency?

23 ACC: Yes, ma'am.

1 MJ: For Specification 5, to admit that, at or near Contingency
2 Operation Station Hammer, Iraq and at or near Rockville, Maryland
3 that you, without authorization, had possession of, access to, or
4 control over more than 20 classified records from the Combined
5 Information Data Network Exchange-Iraq database?

6 ACC: Yes, ma'am.

7 MJ: Do admit, for Specification 7, that, at or near Contingency
8 Operation Station Hammer, Iraq, and at or near Rockville, Maryland,
9 between on or about 5 February -- or 5 January 2010 and 3 February
10 2010, you, without authorization, had possession of, access to, or
11 control over more than 20 classified records from the Combined
12 Information Data Network Exchange-Afghanistan database?

13 ACC: Yes, ma'am.

14 MJ: For Specification 9, do admit that, at or near Contingency
15 Hammer Station, Iraq [sic], that on or about 8 March 2010, you,
16 without authorization, had possession of, access to, or control over
17 more than three classified records from the United States Southern
18 Command database?

19 ACC: Yes, ma'am.

20 MJ: For Specification 10, do admit that, at or near Contingency
21 Operating Station Hammer, Iraq, between on or about 10 April 2010 and
22 12 April 2010, you, without authorization, had possession of, access
23 to, or control over more than five classified records relating to a

1 military operation in Farah Province, Afghanistan occurring on or
2 about 4 May 2009?

3 ACC: Yes, ma'am.

4 MJ: For Specification 15, do you admit that, at or near
5 Contingency Hammer -- Operating Station Hammer, Iraq, on or about 8
6 March 2010, you, without authorization, had possession of, access to,
7 or control over a classified record produced by a United States Army
8 intelligence organization, dated 18 March 2008?

9 ACC: Yes, ma'am.

10 MJ: All right. For all of the specifications, do you admit
11 that you willfully communicated the classified records, classified
12 memorandum, videos, and files described for each specification
13 described in element one to a person not entitled to receive it?

14 ACC: Yes, Your Honor.

15 MJ: And do you admit that, under the circumstances, your
16 conduct was to the prejudice of good order and discipline in the
17 armed forces or the nature to bring discredit upon the armed forces?

18 ACC: Yes, Your Honor.

19 MJ: All right. Let's move into Specifications 13 and 14 of
20 Charge II which are the lesser included offenses to the offenses
21 charged as a violation of 18 United States Code, Section 1030(a)(1),
22 and Article 134.

1 All right, Specifications 13 and 14 of Charge II allege the
2 offense of fraud and related activity in connection with computers in
3 violation of Title 18, United States Code, Section 1030(a)(1) and
4 Article 134, UCMJ. Your counsel has entered a plea of guilty by
5 exceptions and substitutions for you to the lesser included offense
6 of conduct prejudicial to good order and discipline and service
7 discrediting conduct in violation of Article 134, UCMJ, clauses one
8 and two.

9 Now, your plea of guilty admits that the following elements
10 are true and accurately describe what you did:

11 One, that at or near Contingency Operation Station Hammer,
12 Iraq, for Specification 13 between on or about 28 March 2010 and on
13 or about 4 May 2010; for Specification 14, between on or about 14
14 February 2010 and 15 February 2010, you knowingly accessed a computer
15 on a Secret Internet Protocol Router Network.

16 Element two, that you obtained information that has been
17 determined by the United States government, by executive order or
18 statute, to require protection against unauthorized disclosure for
19 reasons of national defense or foreign relations, to wit:
20 Specification 13, more than 75 classified United States Department of
21 State cables; in Specification 14, a classified Department of State
22 cable titled "Reykjavik 13."

1 Element three, that you communicated, delivered,
2 transmitted, or caused to be communicated, delivered, or transmitted
3 the information to a person not entitled to receive it.

4 Element four, that you acted willfully.

5 And element five, that under the circumstances, your
6 conduct was to the prejudice of good order and discipline in the
7 armed forces or was of a nature to bring discredit upon the armed
8 forces.

9 The same definitions for "prejudice to good order and
10 discipline in the armed forces" and "of a nature to bring discredit
11 upon the armed forces" that I read for you for the offenses charged
12 in Specifications 2, 3, 5, 7, 9, 10, and 15 of Charge II also apply
13 to this offense.

14 Would you like me to read them to you again?

15 ACC: No, Your Honor, that's not necessary.

16 MJ: An act is done willfully if it is done voluntarily and
17 intentionally with a specific intent to do something the law forbids,
18 that is, with a bad purpose to disobey or disregard the law.

19 An act is done knowingly if it's done voluntarily and
20 intentionally and not because of a mistake or accident or other
21 innocent reason.

22 The term "computer" means an electronic, magnetic, optical,
23 electrochemical, or other high-speed data processing device

1 performing logical, arithmetic, or storage functions and includes any
2 data storage facility or communications facility directly related to,
3 or operating in conjunction with such device, but the term does not
4 include an automatic typewriter or typesetter, portable handheld
5 calculator, or a similar device.

6 All right. Once again, in -- I defined "person" for you,
7 earlier; the same definitions apply. Would you like me to read that
8 again?

9 ACC: No, Your Honor.

10 MJ: All right. And if this was going to a trier of fact, in
11 determining whether the person who received the information was
12 entitled to receive it, the trier of fact may consider all the
13 evidence introduced at trial, including any evidence concerning the
14 classification status of the information, any evidence relating to
15 law or regulations governing classification and declassification of
16 national security information, its handling use and distribution, as
17 well as any evidence relating to regulations governing the handling,
18 use, and distribution of the information obtained from the classified
19 systems.

20 Do you understand the elements and definitions as I read
21 them to you?

22 ACC: Yes, ma'am.

23 MJ: Do you have any questions about them?

1 ACC: No, ma'am.

2 MJ: Do you understand that your plea of guilty admits that
3 these elements accurately describe what you did?

4 ACC: Yes, Your Honor.

5 MJ: Do you believe and admit that the elements and definitions,
6 taken together, correctly describe what you did?

7 ACC: Yes, Your Honor.

8 MJ: Now, do you understand -- also, same for this offense as
9 the other offenses, that -- if -- your plea to the lesser included
10 offenses I just read is going to establish some of the elements for
11 the government if they intend to proceed with the greater offenses?

12 ACC: Yes, Your Honor.

13 MJ: I just want to stop here and make sure both sides agree
14 with this. Even though -- I distinguished the elements that -- what
15 your plea would establish and what the government had left to prove.
16 What I neglected to say is there is some discrepancy in the dates.
17 You pled by exceptions and substitutions to dates, so if the
18 government has a broader date range, even in an element you
19 established by your plea, the government still has to prove that
20 broader date range. Okay? Do you understand that?

21 ACC: Yes, Your Honor.

22 MJ: Do both sides agree with that?

23 CDC[MR.COOMBS]: Yes, Your Honor.

1 TC[MAJ FEIN]: Yes, Your Honor.

2 MJ: All right. Let's talk about Specification -- well, let's

3 talk about Specification 14 first. That's the Reykjavik cable?

4 ACC: Yes, Your Honor.

5 MJ: All right. Where is that in your ----

6 ACC: Its Page 17, Your Honor.

7 MJ: Okay. This was the cable where I believe you were talking

8 about you were beginning in -- to get interested in this Icesave?

9 ACC: Yes, Your Honor.

10 MJ: Okay. Now, what -- this cable entitled "Reykjavik," it's

11 from the Department of State Net-Centric Diplomacy portal. What is

12 that?

13 ACC: It is the -- or was the SIPR -- one of the SIPR portals

14 that the Department of State had that published -- I guess their wide

15 distribution tables, Your Honor.

16 MJ: So, did -- you had access to SIPRNET as part of your

17 duties?

18 ACC: Yes, Your Honor.

19 MJ: And you were cleared to have access to that level of

20 information?

21 ACC: Yes, Your Honor.

22 MJ: Now, you testified earlier that you had gone to SIPRNET to

23 get CENTCOM and SOUTHCOM and other database information. Was this

1 Department of State site on the same SIPRNET -- you know -- could you
2 go to the Department of State just like you could go to CENTCOM or
3 SOUTHCOM?

4 ACC: Yes, Your Honor, you just change the address that you go
5 to, yes.

6 MJ: So, were you authorized to go and get that Department of
7 State -- to access that portal?

8 ACC: Yes, Your Honor, I was actually told to go there, Your
9 Honor.

10 MJ: And were you told by this Captain Lim to go there?

11 ACC: Yes, Your Honor.

12 MJ: Okay. Who is Captain Lim?

13 ACC: Captain Lim was originally the Assistant S-2 and after our
14 full-time S-2 shifted to a different position, he became -- he
15 covered down and became the brigade S-2, Your Honor.

16 MJ: All right. So, were you and the other analysts all
17 authorized to go to this database?

18 ACC: Yes, Your Honor.

19 MJ: And did you use it in your intelligence analyst duties?

20 ACC: I did, Your Honor, yes.

21 MJ: The information from it?

22 ACC: Yes, Your Honor.

1 MJ: Okay. Now, was this information -- you testified earlier
2 that not all of it was classified, but was this Reykjavik cable
3 classified?

4 ACC: It was, Your Honor.

5 MJ: Now, what did you do -- so, then, were you authorized from
6 that portal to download it onto a portable medium and take it to your
7 house -- or your CHU?

8 ACC: No, Your Honor.

9 MJ: Okay. What did you do -- did you download that cable?

10 ACC: I did, Your Honor.

11 MJ: On what?

12 ACC: I took the web page and I copied and pasted the data onto a
13 text file which I then burned to a CD containing some other things --
14 I don't remember what -- and then I took that to my CHU, Your Honor.

15 MJ: And what did you do with that when you went -- when you got
16 to your CHU?

17 ACC: I put that onto my personal computer and then uploaded it
18 using the form, Your Honor.

19 MJ: Using what form?

20 ACC: The website form for the WikiLeaks website.

21 MJ: So, you uploaded that Reykjavik cable to your personal
22 computer and then -- am I understanding your testimony -- that you
23 sent that cable to WikiLeaks?

1 ACC: Correct, Your Honor.

2 MJ: On the form that they told senders to use?

3 ACC: Yes, Your Honor.

4 MJ: Okay. And, once again, same as the other things, were you
5 acting willfully?

6 ACC: Yes, Your Honor.

7 MJ: Did you know you are violating the law?

8 ACC: I did, Your Honor, yes.

9 MJ: Okay. Did you -- was WikiLeaks entitled to receive this
10 Department of State cable?

11 ACC: No, Your Honor.

12 MJ: Were they authorized to receive it?

13 ACC: No, Your Honor.

14 MJ: Okay. Were you authorized to send it?

15 ACC: I was not, Your Honor.

16 MJ: Were you authorized to take it out of the SCIF?

17 ACC: No, Your Honor.

18 MJ: These offenses also have the element of conduct prejudicial
19 to good order and discipline and service discrediting conduct. Do
20 you believe your conduct, in sending this Reykjavík cable to
21 WikiLeaks, was prejudicial to good order and discipline?

22 ACC: It was, Your Honor, yes.

1 MJ: And was it for the same reason we talked about earlier or
2 different reasons?

3 ACC: Definitely the same reasons, Your Honor, yes.

4 MJ: Do you believe it was service discrediting?

5 ACC: Yes, Your Honor.

6 MJ: And for the same reasons we talked about earlier or for
7 different reasons?

8 ACC: The same reasons, Your Honor.

9 MJ: Okay. You talked about, here, in your statement that you,
10 basically, concluded that Iceland was being bullied, diplomatically,
11 by two larger European powers and out of viable solutions and coming
12 to the U.S. for assistance and it didn't appear that we were going to
13 do anything. We're you in a position of authority to decide what the
14 United States government was going to do with respect to Iceland?

15 ACC: No, Your Honor.

16 MJ: Did -- We talked about the defense of justification and
17 necessity already. Do you believe the fact that you -- you had a
18 personal belief in this -- that that somehow gave you an authorized
19 military duty to send this cable to WikiLeaks?

20 ACC: I did not have that belief, no, Your Honor.

21 MJ: Okay. So, you had no military duty, then, to send this
22 cable to WikiLeaks?

23 ACC: No, Your Honor.

1 MJ: Okay. And did you believe -- do you believe the defense of
2 necessity, as I defined it before -- you know, were you preventing
3 imminent harm to somebody, like the drowning person in the lake, by
4 sending this cable?

5 ACC: Correct, Your Honor. So it doesn't ----

6 MJ: That's a bad question.

7 ACC: ---- apply.

8 MJ: Did I -- let me ask it again a better way. We talked about
9 the defense of necessity.

10 ACC: Yes, Your Honor.

11 MJ: To talk about trespassing over somebody's house to rescue
12 the drowning person because there is nobody else who can do it. When
13 you sent this cable, were you in that kind of situation?

14 ACC: No, Your Honor, I was not.

15 MJ: Does the defense of necessity apply in your case?

16 ACC: No, Your Honor.

17 MJ: For this specification, did the ----

18 ACC: Not this specification, no Your Honor.

19 MJ: Okay. Does either side believe any further inquiry is
20 required? Except for the date of the specification, did you act on -
21 - just a minute, what's the date on the specification, here? That
22 would be -- did you act on 15 -- between 15 February and 18 February
23 of 2010?

1 ACC: Yes, Your Honor, it was 14 February and 15 February, Your
2 Honor.

3 MJ: Oh, I'm sorry, that's right. Those are the words you said
4 -- 14 and 15 February 2010; that's the exceptions and substitutions
5 you made. So, your conduct, here, in Specification 14, then, was
6 between 14 February 2010 and 15 February 2010?

7 ACC: Yes, Your Honor.

8 MJ: Okay. Now, does either side believe any further inquiry is
9 required?

10 ATC[CPT MORROW]: Your Honor, on Page 18, Paragraph F, the
11 accused states, "I felt I might be able to right a wrong by having
12 them publish this document." That line, in particular, tends to
13 contradict something being service discrediting, so it might be
14 something the Court wants to explore just one more time.

15 MJ: All right. Well, we went over a little bit and the
16 government would like me to go over this in more detail. This is --
17 your statement that they're talking about is, "I decided the cable
18 was something that would be important and I felt I might be able to
19 right a wrong by having them publish this document." So, you,
20 personally, believed that you are doing a good thing, is that fair?

21 ACC: I felt it could be, yes, Your Honor.

1 MJ: Okay. So, we talked about, earlier, that -- did you have
2 the authority to decide to declassify a cable and send it to
3 WikiLeaks because you think a policy is a good thing?

4 ACC: Your Honor, being a junior-enlisted specialist, you know,
5 in the Army, no, Your Honor.

6 MJ: So -- I mean -- so does somebody else get to make those
7 decisions?

8 ACC: I imagine in this case it would be the Department of State
9 in their channels, Your Honor.

10 MJ: So, if the Department of State determines that this cable
11 should be classified and should not be released to WikiLeaks and you
12 decide, as a personal matter, that you don't agree with that and you
13 think it should be released to WikiLeaks and you do release it to
14 WikiLeaks, the fact that you think you're doing the right thing, can
15 that still be service discrediting?

16 ACC: Yes, Your Honor.

17 MJ: And why?

18 ACC: Because it -- if Soldiers in the position I had did that,
19 then it -- I mean, it damages our perception -- the public's
20 perception of how -- whether the military and the services can
21 safeguard information, Your Honor.

1 MJ: So, with respect to prejudice to good order and discipline,
2 if -- is the military and organization that follows a chain of
3 command?

4 ACC: Yes, Your Honor.

5 MJ: So, if someone at the top of the chain of command makes a
6 decision and people below decide, "Well, I don't agree with that
7 decision, so I'm going to live off of my own moral code and not
8 follow the rules and regulations that are set forth by the people
9 with authority to make those rules and regulations," what happens to
10 the organization?

11 ACC: It -- you can't operate in that -- I mean, you just have --
12 we would have junior ranks making decisions that contradict the
13 orders and so the system would seize up, Your Honor.

14 MJ: So, do you think that could be prejudicial to good order
15 and discipline?

16 ACC: Absolutely, Your Honor, yes.

17 MJ: All right. And is that sort of what you were talking to me
18 -- when you were talking to me earlier about service discrediting
19 conduct that might cause people to lose confidence in an organization
20 if they see it sort of disintegrating like that?

21 ACC: Yes, Your Honor, it would be worrying, yes.

1 MJ: All right. And do you believe that your conduct in this
2 case, you know, contributed, I guess to, at least a minor part, to
3 that disorganization?

4 ACC: Yes, Your Honor.

5 MJ: Okay. Does the government believe any further inquiry is
6 required?

7 ATC[CPT MORROW]: No, Your Honor.

8 CDC[MR.COOMBS]: No, Your Honor.

9 MJ: Now, let's look at Specification 13. Now, that talks about
10 more than 75 classified cables. Now, did you have access to more
11 than 75 classified cable -- Department of State cables?

12 ACC: Yes, Your Honor.

13 MJ: All right. Did you get those from the same portal that you
14 got the Reykjavik cable from?

15 ACC: I did, Your Honor.

16 MJ: All right. And was that also done -- was that done between
17 28 March 2010 and 4 May 2010?

18 ACC: It was done, I think, around the 10th of April, Your Honor.

19 MJ: All right. So, is the 10th of April between 28 March 2010
20 and on or about 4 May 2010?

21 ACC: Yes, it is, Your Honor; April.

1 MJ: Okay. So, it would be between those dates that -- I mean,
2 that's the way that your plea by exceptions and substitutions has
3 those dates. Do you believe that those are accurate dates?

4 ACC: Yes, Your Honor, I do.

5 MJ: Okay. Now, where on your timeline are we talking about --
6 or in your statement are we talking about those cables in
7 Specification 13 of Charge II?

8 ACC: It's Page 30, Your Honor, Section 11.

9 MJ: All right. So, this is -- so, when you -- are these cables
10 the last thing that you uploaded and sent?

11 ACC: Yes, Your Honor.

12 MJ: Okay. So, we're getting, now, into the late March
13 timeframe and you said in your statement that you had begun
14 establishing a dialogue with some -- at least one person -- or two
15 people from WikiLeaks?

16 ACC: At least one user account. I don't know what was on the
17 other side, Your Honor.

18 MJ: Okay. And I guess at some point in your statement you were
19 talking about -- you began to look at these Department of State
20 cables and you began to be really interested in them?

21 ACC: Yes, Your Honor.

22 MJ: Okay. Tell me about that.

1 ACC: Well, in the course of my duties, I previously started
2 looking at, as directed -- I started looking at cables, more
3 specifically, for the Baghdad series of cables and then things that
4 were tagged with "Iraq" -- so, the general area of Iraq and then I
5 went over to Afghanistan and then I started looking just wherever my
6 interest piqued, Your Honor.

7 MJ: Okay. And did you download any cables off of the SIPRNET?

8 ACC: Yes, Your Honor.

9 MJ: And to what?

10 ACC: To, first, the -- my workstation, Your Honor, and then from
11 the workstation onto CD -- onto DVD-RW and then onto my personal
12 laptop.

13 MJ: Okay. So, did you do this, basically, the same way that --
14 and you were -- were you authorized to access the portal to get the
15 cable -- to look at the cables?

16 ACC: Yes, Your Honor.

17 MJ: Were you authorized to download them to your personal
18 workstation?

19 ACC: To my workstation? Yes, Your Honor.

20 MJ: Were you authorized to download them to a CD?

21 ACC: Yes, Your Honor.

22 MJ: Were you authorized to take them out of the SCIF?

23 ACC: No, Your Honor.

1 MJ: All right. Were you authorized put them on your personal
2 computer?

3 ACC: No, Your Honor.

4 MJ: Were you authorized -- did you transfer them to WikiLeaks?

5 ACC: I re-did the documents to clean them up and then I uploaded
6 them.

7 MJ: Okay. When you said you re-did the documents to clean them
8 up, what does that mean?

9 ACC: There was a lot of, like, extraneous formatting that I
10 removed from the documents and I put it into a table, Your Honor.

11 MJ: Other than formatting, did you take any -- did you change
12 any of the substance?

13 ACC: No substance changes, no, Your Honor.

14 MJ: So -- what -- and these more than 75 cables were
15 classified, the charged cables?

16 ACC: Yes, Your Honor.

17 MJ: And did you move anything -- remove anything from those
18 cables that would have made them unclassified?

19 ACC: No, Your Honor.

20 MJ: So, when you sent them to WikiLeaks, were they still
21 classified?

22 ACC: They still had classification markings, yes, Your Honor.

1 MJ: Well, if the substance didn't change, would the reason that
2 they had classification markings still be present?

3 ACC: Yes, Your Honor.

4 MJ: Okay. So, you didn't change the words?

5 ACC: Correct, Your Honor.

6 MJ: You just changed the formatting, is that what I'm hearing?

7 ACC: Changed how it worked and how you accessed it, Your Honor.

8 MJ: But the words of the substance from what you took out of
9 the State Department portal and what you, ultimately, wound up
10 sending to WikiLeaks was the same?

11 ACC: Yes, Your Honor.

12 MJ: Okay. Did you act willfully?

13 ACC: Yes, Your Honor.

14 MJ: And was WikiLeaks entitled to receive the State Department
15 -- the classified State Department cables?

16 ACC: No, Your Honor.

17 MJ: And, under the circumstances, was your conduct to the
18 prejudice of good order and discipline in the armed forces or of a
19 nature to bring discredit upon the armed forces?

20 ACC: No, Your Honor -- well, yes -- I think. Yes, it is ----

21 MJ: Okay. Let me ask the question again ----

22 ACC: ---- prejudicial.

1 MJ: Sometimes my questions can be confusing. Was your conduct
2 to the prejudice of good order and discipline in the armed forces?

3 ACC: Yes, Your Honor.

4 MJ: Was is of a nature to bring discredit upon the armed
5 forces?

6 ACC: Yes, Your Honor.

7 MJ: Was -- are you answering "yes" because of the reasons we
8 spoke about earlier or for different reasons?

9 ACC: The same reasons, Your Honor.

10 MJ: Okay. So, am I -- what I'm hearing you tell me, is, then -
11 - basically, for all these specifications that we talked about today,
12 your conduct was prejudicial to good order and discipline and service
13 discrediting conduct for the same reason?

14 ACC: Yes, Your Honor.

15 MJ: All right. You also say here that you were talking about
16 looking at the Department of State cables and how they were --you
17 know, they're SIPDIS means it goes onto SIPRNET and a lot of people
18 have access to SIPRNET -- when classified documents are on SIPRNET
19 and a lot of people are cleared to have access to SIPRNET, does that
20 give you any authorization, justification, or excuse to -- does that
21 mean those can be downloaded off of SIPRNET to personal computers and
22 shipped to people who don't have clearances?

23 ACC: No, Your Honor.

1 MJ: Okay. So, even though a lot of people have access to
2 SIPRNET, it's a controlled access? I mean, did somebody give them
3 authority to get onto SIPRNET or can any Tom, Dick, and Harry just go
4 onto SIPRNET?

5 ACC: If you have -- at the time, if you had access to a SIPRNET
6 computer and you were on SIPRNET, you have access to the Net-Centric
7 Diplomacy site, Your Honor.

8 MJ: I guess where I'm going is -- to -- for a person to get
9 access to SIPRNET, you have to -- does someone have to give you a
10 username and password?

11 ACC: For our unit, it was the S-6 that would give us that, Your
12 Honor.

13 MJ: All right. So, say I walk into your unit at Contingency
14 Operation Base Hammer and I haven't been authorized by anybody to do
15 anything with respect to SIPRNET and I walk into the SCIF, can I go
16 on SIPRNET?

17 ACC: No, Your Honor, you would have to -- we wouldn't let you
18 in, Your Honor.

19 MJ: But I guess where I'm going with this is to get onto
20 SIPRNET, are there some kind of controls so I can't get on it if I
21 walk into the SCIF on Contingency Operation Base Hammer?

22 ACC: In the SCIF? Yes, Your Honor.

1 MJ: Okay. If there is SIPRNET anywhere other than the SCIF,
2 are there some controls on who can get on it and who can have access
3 to that information?

4 ACC: Sometimes no, Your Honor.

5 MJ: No? Okay. So anybody can just get on and go use it?

6 ACC: For some workstations, yes, Your Honor. Legally, no, but
7 the reality was yes.

8 MJ: Okay. WikiLeaks -- are they -- would they have any
9 authorization under any circumstances to access the SIPRNET computer?

10 ACC: No, Your Honor.

11 MJ: So, when you downloaded that Department of State
12 information and brought it to your personal computer and when you
13 sent it to WikiLeaks, did you have any thought in your mind that they
14 were legally authorized to receive it?

15 ACC: No, Your Honor.

16 MJ: Okay. So you knew what you're doing was wrong?

17 ACC: Yes, Your Honor.

18 MJ: And you knew it was against the law?

19 ACC: Correct, Your Honor.

20 MJ: Does either side desire any further inquiry with respect to
21 the more than 75 classified cables?

22 TC[MAJ FEIN]: No, Your Honor.

23 CDC[MR.COOMBS]: No, Your Honor.

1 MJ: All right. Did you say something about these files were
2 corrupted and they had to be sent again or something of that nature?

3 ACC: The later ones -- although the ones that were available up
4 to February of 2010 and then March and April were corrupted, Your
5 Honor.

6 MJ: Okay. Well, what happened -- I thought you testified
7 earlier that, for Specification 13 of Charge II, you sent them in
8 April?

9 ACC: I did send them in April, but that was the ones up to
10 February, Your Honor.

11 MJ: Oh, okay. So you sent the ones up in February that were
12 not corrupted in April?

13 ACC: Yes, Your Honor, and then ----

14 MJ: So, the more than 75 classified charged documents, were
15 they among the corrupted or the not corrupted?

16 ACC: The not corrupted, Your Honor.

17 MJ: So they -- you sent them and they made it?

18 ACC: Yes, Your Honor.

19 MJ: Okay.

20 ACC: And then I made an attempt to add two more months and that
21 never happened, Your Honor.

22 MJ: Okay. So, you actually did send them more than 75
23 classified cables to WikiLeaks?

1 ACC: Correct, Your Honor.

2 MJ: Does either side believe any further inquiry is required
3 with respect to Specifications 13 and 14 of Charge II?

4 TC[MAJ FEIN]: No, Your Honor.

5 CDC[MR.COOMBS]: No, Your Honor.

6 MJ: All right. PFC Manning, then, do you admit that, at or
7 near Contingency Operating Station Hammer, Iraq, for Specification
8 13, between on or about 28 March and on or about 4 May 2010, that you
9 obtained information that has been determined by the United States
10 government, by executive order or statute, to require protection
11 against unauthorized disclosure for reasons of national defense or
12 foreign relations, to wit, for Specification 13: more than 75 United
13 States Department of State cables? And do you admit that, at or near
14 Contingency Operations Station Hammer, for Specification 14, between
15 on or about 14 February 2010 and 15 February 2010, you knowingly
16 accessed a computer on a Secret Internet Protocol Router Network and
17 that you obtained information that has been determined by the United
18 States government, by executive order or statute, to require
19 protection against unauthorized disclosure for reasons of national
20 defense or foreign relations, to wit, for Specification 14: a
21 classified Department of State cable titled, "Reykjavik 13"?

22 ACC: Yes, Your Honor.

1 MJ: All right. For this element, too, were you talking about -
2 - the information has been determined by the United States
3 government, by executive order or statute, to require protection
4 against unauthorized disclosure for reasons of national defense or
5 foreign relations, does that mean classification?

6 ACC: Yes, Your Honor.

7 MJ: Okay. So, if a document is classified, does that fall into
8 that category, here?

9 ACC: It does, Your Honor.

10 MJ: Do the parties agree?

11 CDC[MR.COOMBS]: Yes, Your Honor.

12 TC[MAJ FEIN]: Yes, Your Honor.

13 MJ: Okay. And do you admit, then, for Specifications 13 and 14
14 of Charge II that you communicated, delivered, transmitted, or caused
15 to be communicated, delivered, or transmitted, the information to a
16 person not entitled to receive it?

17 ACC: Yes, Your Honor.

18 MJ: Do you admit that you acted willfully?

19 ACC: Yes, Your Honor.

20 MJ: And do you admit that under the circumstances, your conduct
21 was to the prejudice of good order and discipline in the armed forces
22 or of a nature to bring discredit upon the armed forces?

23 ACC: Yes, Your Honor.

1 MJ: All right. We have one final specification to go over and
2 that's Specification 5 of Charge III. Are the parties ready to
3 proceed? PFC Manning, are you ready to proceed or do you want to
4 have a brief recess before we go into that one?

5 ACC: Continue, Your Honor.

6 MJ: All right. Now, do you have a copy -- I've asked your
7 counsel to make a copy for you of the first page of Army Regulation
8 380-5, dated 29 September 2000, as well as Paragraph 7-4, the
9 paragraph you're charged with violating in that regulation and
10 Paragraph 1-21, entitled "Sanctions." Do you have a copy of all
11 three of those before you?

12 ACC: Yes, Your Honor.

13 MJ: Let's talk about Specification 5 of Charge III. In
14 Specification 5 of Charge III, you're charged with the offense of
15 violating a lawful general order in violation of Article 92, UCMJ.
16 Your defense counsel has entered pleas by exceptions and
17 substitutions for this offense as well. By pleading guilty -- but
18 you're pleading guilty to the same offense, just different dates, I
19 believe, is the exceptions and substitutions.

20 By pleading guilty to this offense, you're admitting that
21 the following elements accurately describe what you did:

1 One, there was in existence a certain lawful general
2 regulation in the following terms: Paragraph 7-4, Army Regulation
3 380-5, dated 29 September 2000.

4 Two, that you had a duty to obey that regulation.

5 And three, that at or near Contingency Operating Station
6 Hammer, Iraq, between on or about 8 January 2010 and on or about 10
7 May 2010, you violated this lawful general regulation by wrongfully
8 storing classified information.

9 Okay, give me one minute, here.

10 CDC[MR.COOMBS]: Ma'am, the Court had stated 10 May for the end
11 date and it's 27 May

12 MJ: 27 May -- that's what -- I thought I saw that. Okay. So,
13 let's go -- let's just change that last element, here. So, that
14 would be that, at or near -- the element three would be that, at or
15 near Contingency Operations Station Hammer, Iraq, between on or about
16 8 January 2010 and on or about 27 May 2010, you violated this lawful
17 general regulation by wrongfully storing information.

18 And general regulations are those regulations which are
19 generally applicable to an armed force in which are properly
20 published by the secretary of a military -- by a military department.
21 General regulations also include regulations which are generally
22 applicable to the command of the officer issuing them throughout the
23 command or a particular subdivision in which are issued by a general

1 officer having general court-martial jurisdiction or a general or
2 flag officer in command or a commander superior to one of those.

3 When a general regulation prohibits certain acts, except
4 under certain conditions, then your conduct must not have come in --
5 fallen within one of the exceptions to regulation. And, once again,
6 you must have had a duty to obey that regulation.

7 To do something wrongfully means to do something without
8 legal justification or excuse.

9 Do you understand the elements and definitions as I read
10 them to you?

11 ACC: Yes, Your Honor.

12 MJ: Do you have any questions about them?

13 ACC: Yes, Your Honor, or no, Your Honor, I don't have any.

14 MJ: Do understand that your plea of guilty admits that these
15 elements accurately describe what you did?

16 ACC: Yes, Your Honor.

17 MJ: Do you believe it admits that the elements and definitions,
18 taken together, correctly describe what you did?

19 ACC: Yes, ma'am.

20 MJ: All right. Now, let's -- were you still at Contingency --
21 were you still deployed at Contingency Operation Base Hammer, Iraq on
22 the dates that you -- between 8 January 2010 and 27 May 2010?

23 ACC: Yes, Your Honor.

1 MJ: Okay. Now, you have a copy -- we talked about earlier of
2 the front page of the Army Regulation 380-5?
3 ACC: I do, Your Honor.
4 MJ: Was the title of that regulation?
5 ACC: Department of Army Information Security Program.
6 MJ: And who is it issued by? It's on the bottom.
7 ACC: Headquarters, Department of the Army.
8 MJ: Do you believe that this is a lawful general regulation?
9 ACC: Yes, Your Honor.
10 MJ: All right. Next, at Paragraph 21 -- 1-21, where it says,
11 "Sanctions" ----
12 ACC: Just, Your Honor.
13 MJ: ---- do you believe that this -- a regulation has to be --
14 sometimes regulations provide guidance and sometimes they're
15 punitive. Do you believe that AR 380-5 is a punitive regulation?
16 ACC: Yes, Your Honor.
17 MJ: And what's this regulation meant to govern?
18 ACC: It governs information security, Your Honor.
19 MJ: All right. Let's look at -- it's Chapter 7 you also have a
20 copy of, it talks about storage and physical security standards and
21 part of that, in Section 2, is Paragraph 7-4 and that's the paragraph
22 that you are accused of violating. Can you tell me how you violated
23 that paragraph?

1 ACC: Yes, Your Honor, by not abiding by 380-5 -- in this
2 paragraph -- in my -- in wrongfully storing and transferring
3 classified information -- properly classified information throughout
4 my period in Iraq.

5 MJ: So, are you talking about -- is this information targeting
6 -- we spent the afternoon talking about how you transferred
7 everything from the Reykjavik cable all the way through and then
8 ending with the Department of State cables in each of the
9 specifications that we just discussed.

10 ACC: Yes, Your Honor.

11 MJ: So, when you were telling me about taking the --
12 downloading the information from your computer to your workstation
13 and then to your CD and then leaving the SCIF and uploading that to
14 your personal computer and sending it out, basically, over the
15 unsecured Internet, is that the conduct that you're talking to me
16 about that violates this regulation?

17 ACC: Yes, Your Honor.

18 MJ: Are you allowed, under this regulation, to take classified
19 information from a SIPRNET computer and take it to your home computer
20 and upload it?

21 ACC: No, Your Honor.

1 MJ: Are you authorized to send classified information that
2 you've taken and downloaded on a CD and put on your personal computer
3 to send that over the general Internet waves?
4 ACC: No, Your Honor.
5 MJ: All right. When you do that, does this violate this
6 Paragraph 7-4 of Army Regulation 380-5?
7 ACC: Yes, Your Honor.
8 MJ: All right. Is it the parties' theory that this is -- in
9 this specification, that it's violated in some other fashion?
10 TC[MAJ FEIN]: No, Your Honor.
11 CDC[MR.COOMBS]: No, Your Honor.
12 MJ: All right. Do the parties believe -- and this was done
13 between the dates we talked about, here, between 8 January 2010 and
14 27 May 2010?
15 ACC: Yes, Your Honor.
16 MJ: Okay. Does either side believe any further inquiry is
17 required?
18 ATC[CPT MORROW]: Your Honor, I may have missed this, but did
19 you explain divers occasions to the accused?
20 MJ: Do I have divers occasions on here?
21 ATC[CPT MORROW]: It is in the specification.
22 MJ: No, I didn't even read it in the element, thank you.

1 All right, the written statement, I believe I have also
2 from you all, doesn't have the words "divers occasions" in it with
3 the elements. So, PFC Manning, when I'm going over -- this is the
4 attachment to the statement that you gave me. So, I just want to
5 make sure you understand what divers occasions means and that --
6 since you didn't except those words out, what you are pleading guilty
7 to. You're charged with -- on divers -- your -- violating this
8 regulation on divers occasions between the dates we just discussed
9 which were 8 January 2010 and 27 May 2010. Now, "divers occasions"
10 means two or more times. So, did you violate this regulation,
11 between those dates, two or more times?

12 ACC: Yes, Your Honor.

13 MJ: Okay. Because we discussed -- basically -- does your
14 conduct in Specifications 2, 3, 5, 7, 9, 10, 13, 14, and 15, all of
15 those specifications we just discussed involve you taking information
16 off of the SIPRNET, taking it out of the SIPR, and loading it either
17 onto your personal computer or your camera and sending those to
18 WikiLeaks. So, the loading of the information in those
19 specifications on your personal computer, is that in violation of AR
20 380-5, Paragraph 7-4?

21 ACC: Yes, Your Honor.

22 MJ: Okay. And you did that more than two times, right?

23 ACC: Yes, Your Honor.

1 MJ: Okay. Same thing for sending the information from your
2 personal computer to, over the unsecure Internet, to WikiLeaks, you
3 did that more than two times, too, is that right?

4 ACC: Yes, Your Honor.

5 MJ: Okay. Does either side believe any further inquiry is
6 required?

7 ATC[CPT MORROW]: No, Your Honor.

8 CDC[MR.COOMBS]: No, Your Honor.

9 MJ: All right. PFC Manning, do you admit that there was in
10 existence a lawful general regulation in the following terms:
11 Paragraph 7-4, Army Regulation 380-5, dated 29 September 2000?

12 ACC: Yes, Your Honor.

13 MJ: Do you admit that you had a duty to obey that regulation?

14 ACC: Yes, Your Honor.

15 MJ: And do you admit that, on divers occasions, between on or
16 about 8 January 2010 and on or about 27 May 2010, at or near
17 Contingency Operating Station Hammer, you violated this lawful
18 general regulation by wrongfully storing classified information?

19 ACC: Yes, Your Honor.

20 MJ: Does either side believe any further inquiry is required as
21 to any of this?

22 CDC[MR.COOMBS]: No, Your Honor.

1 TC[MAJ FEIN]: Your Honor, may we ask for a short recess before
2 you continue and before we answer that question?

3 MJ: Certainly. How long would you like?

4 TC[MAJ FEIN]: 15 minutes, Your Honor.

5 MJ: All right. If we start at 5 after, will 13 minutes give
6 you enough time to do what you need to do?

7 TC[MAJ FEIN]: It will, ma'am.

8 MJ: All right. Court is in recess until 1705 or 5:05 PM.

9 **[The Article 39(a) session recessed at 1655, 28 February 2013.]**

10 **[The Article 39(a) session was called to order at 1708, 28 February**
11 **2013.]**

12 MJ: This Article 39(a) session is called order. Let the record
13 reflect all parties present when the court recessed are again present
14 in court.

15 PFC Manning, let me just ask you one more question on that
16 last -- your plea of guilty to Specification 5 of Charge III. Did
17 you have a duty to obey that regulation?

18 ACC: Yes, Your Honor.

19 MJ: Government, any further inquiry?

20 TC[MAJ FEIN]: Yes, ma'am, the first, really, is a question for
21 the Court, Your Honor. Earlier the Court asked -- or made a
22 statement about the dates and how the government would have to prove
23 the greater date range versus the inclusive date range, but most of

1 the specifications are pled in between two dates. So, I guess, the
2 government was unclear what the Court actually meant after looking
3 back at it.

4 MJ: Well, if they're pled between two dates, that's fine.
5 Let's address that issue when it's ripe.

6 TC[MAJ FEIN]: Yes, ma'am.

7 MJ: If the evidence shows that it's -- if they're two broad
8 dates and the evidence shows it's two narrow dates, the Court could
9 find, by exceptions and substitutions, the narrower dates. Or, if
10 they're different dates -- I don't know all of the -- I haven't
11 looked at this. Are all of the lesser included offenses within the
12 dates charged by the government -- in the exceptions and
13 substitutions?

14 TC[MAJ FEIN]: Yes, ma'am, that's why -- just making sure that
15 the Private First Class Manning understands that they're all
16 inclusive.

17 CDC[MR.COOMBS]: The lesser included falls within their date
18 range, so the government's date ranges are wider than -- and what we
19 gave them were specific dates.

20 MJ: All right. So, I mean, PFC Manning, that's going to be a
21 fact-specific determination, you know, for the fact-finder at the
22 time. You can plead guilty with a subset within a larger subset, but
23 your subset still is within a larger subset but it would be -- you

1 know, the fact-finder could say, "Well, I just--truncate it and make
2 it on the evidence that has been presented." So, do you have any
3 questions about that?

4 ACC: No, Your Honor. I am good.

5 MJ: Do the parties agree with my interpretation of this? It's
6 really a fact-finding decision; it could be excepted and substituted
7 or left within the broader date range depending on how the facts come
8 out.

9 TC[MAJ FEIN]: Yes, ma'am.

10 CDC[MR.COOMBS]: Yes, Your Honor.

11 MJ: Any further inquiry other than that?

12 TC[MAJ FEIN]: Yes, ma'am, I defer to co-counsel.

13 ATC[CPT OVERGAARD]: Ma'am, on Specification 13, you had
14 explored whether or not the cables were the same when they were
15 transmitted as they were when they were downloaded from the SIPRNET
16 and the government just wonders if the Court wants to explore that
17 with Specifications 5 and 7 as well because in Paragraph 6(t) on Page
18 16, there's reference to the possibility that the CIDNE-I and CIDNE-A
19 transmission had been sanitized between the download and the
20 transmission.

21 MJ: All right. Well, PFC Manning, let's talk about -- in all
22 of the specifications we talked about, let's look at it specification

1 by specification. In Specification 2 of Charge II, was the video
2 altered in any way when you sent it?

3 ACC: No, Your Honor.

4 MJ: So, you took what you got off the SIPRNET and that's what
5 you sent?

6 ACC: Yes, Your Honor.

7 MJ: Specification 3, the two documents in Specification 3, the
8 classified memorandum, was that changed, in anyway, between the time
9 that you got it from SIPRNET and the time you sent it?

10 ACC: No, Your Honor.

11 MJ: Specification 5, these are the two that the government
12 wants me to explore, Specifications 5 and 7; those are the two
13 databases -- the more than 20 documents. Did you change those
14 between the time you took them off the SIPRNET and the time you sent
15 them to WikiLeaks?

16 ACC: Yes, Your Honor, I removed some extraneous information that
17 I did not feel needed to be in the version that I sent to whoever I
18 was going to send it to.

19 MJ: When you talked about "you removed extraneous information,"
20 what extraneous information?

21 ACC: Specifically, IP addresses, usernames, a lot of other
22 information attached to the records, Your Honor.

1 MJ: Would that -- the information that you removed, would that
2 have changed their status from classified to unclassified?

3 ACC: The -- I believe that the extraneous information that was
4 on there was classified -- that's my -- that was my impression and --
5 that, I removed. So, I removed some classified information without
6 changing the other information, Your Honor.

7 MJ: So, if the extraneous information you removed was
8 classified, were the cables -- the declassified cables that are
9 charged here that you sent ----

10 ACC: SIGACTs, Your Honor.

11 MJ: ----- or the SIGACTs, I'm sorry. Were they -- did they
12 remain classified because you took some of the classified information
13 out?

14 ACC: I did not remove the field -- the classification field, so
15 I don't know what status they are in because a lot of the documents
16 don't have classification markings separately.

17 MJ: Okay. Now, Government, the charged documents that we went
18 over at the beginning of the trial when PFC Manning was sitting over
19 here at the panel box, were they the charged documents as downloaded
20 from the SIPRNET or were they the charged documents as released?

21 TC[MAJ FEIN]: Your Honor, the charged documents that were
22 printed and put in the binder in Appellate Exhibit 501 were the exact

1 documents printed from the SD card found at Private First Class
2 Manning's aunt's house.

3 MJ: Okay.

4 TC[MAJ FEIN]: So, as released.

5 MJ: The charged documents on Specifications 5 and 7 that we
6 looked through, were those -- did they appear, when you viewed them,
7 in the same form as they were on the SD card in your aunt's camera?

8 ACC: Yes, Your Honor.

9 MJ: Now, was that before or after they had been changed and the
10 extraneous information removed?

11 ACC: That's after, Your Honor.

12 MJ: So, the charged documents, as they appear in that binder
13 that you looked at, are in the form that you had already changed and
14 the form that was sent to WikiLeaks?

15 ACC: Yes, Your Honor, it did.

16 MJ: Were those documents, as you reviewed them in that binder,
17 are they classified?

18 ACC: Well, I would assume so because -- yes, Your Honor.

19 MJ: Well, you're admitting, here, to a criminal offense that --
20 --

21 ACC: Yes.

1 MJ: ---- you are transmitting classified documents so why don't
2 you take a couple of moments and talk to your counsel? If they're
3 not classified, we may need to have another ----

4 ACC: They are classified, Your Honor.

5 MJ: ---- conversation.

6 ACC: The original classification authority said that they're
7 classified, yes, Your Honor.

8 MJ: And you're sure about that?

9 ACC: Yes, Your Honor.

10 MJ: Okay. So, at the time you sent them, they were classified?

11 ACC: Yes, Your Honor.

12 MJ: All right. And you're sure about that?

13 ACC: Yes, Your Honor.

14 MJ: Okay. Does other side believe any further inquiry is
15 required?

16 TC[MAJ FEIN]: No, Your Honor.

17 CDC[MR.COOMBS]: No, Your Honor.

18 MJ: Trial Counsel, what did you calculate to be the maximum
19 punishment authorized in this case based solely on PFC Manning's
20 plea?

21 TC[MAJ FEIN]: Your Honor, based solely on Private First Class
22 Manning's plea, the maximum punishment is to forfeit all pay and

1 allowances, to be reduced to Private (E1), to be confined for 20
2 years, and to be dishonorably discharged from the service.

3 MJ: Defense Counsel, do you agree?

4 CDC[MR.COOMBS]: Yes, Your Honor.

5 MJ: All right. PFC Manning, do you understand that, based on
6 your plea, alone, this court could sentence you to be reduced to the
7 grade of E1, to forfeit all pay and allowances, to be confined for up
8 to 20 years, and to be dishonorably discharged from the service?

9 ACC: Yes, ma'am.

10 MJ: Is the government interested in a fine in this case?

11 TC[MAJ FEIN]: Yes, Your Honor.

12 MJ: And a potential fine also. Do you have any question as to
13 the maximum sentence that could be imposed as a result of your guilty
14 plea?

15 ACC: No, Your Honor.

16 MJ: And, Trial Counsel, is there any pre-trial agreement in
17 this case?

18 TC[MAJ FEIN]: No, Your Honor.

19 MJ: Even though, Counsel, there are no formal, written pre-
20 trial agreements, are there any unwritten agreements or
21 understandings in this case?

22 CDC[MR.COOMBS]: No, Your Honor.

23 TC[MAJ FEIN]: No, Your Honor.

1 MJ: PFC Manning, has anybody made any agreement with you or
2 promise to you in order to get you to plead guilty?

3 ACC: No, Your Honor.

4 MJ: Mr. Coombs and the rest of the defense team, have you had
5 enough time and opportunity to discuss this case with PFC Manning?

6 CDC[MR.COOMBS]: Yes, Your Honor.

7 ADC [MAJ HURLEY]: Yes, ma'am.

8 ADC [CPT TOOMAN]: Yes, Your Honor.

9 MJ: All right. So, I've asked all three of you that; from now
10 on, I'll just -- Mr. Coombs if you can answer as lead counsel, then?

11 CDC[MR.COOMBS]: Okay.

12 MJ: PFC Manning, have you, in fact, consulted fully with your
13 defense team and received the full benefit of their advice?

14 ACC: Yes, Your Honor.

15 MJ: Are you satisfied that your defense team's advice is in
16 your best interest?

17 ACC: Yes, Your Honor.

18 MJ: Are you satisfied with your defense counsel?

19 ACC: Yes, Your Honor.

20 MJ: Are you pleading guilty voluntarily and of your own free
21 will?

22 ACC: Yes, ma'am.

1 MJ: Has anyone made any threat or in any way tried to force you
2 to plead guilty?

3 ACC: No, Your Honor.

4 MJ: Do you have any questions as to the meaning and effect of
5 your guilty plea?

6 ACC: No, Your Honor.

7 MJ: Do you fully understand the meaning and effect of your
8 guilty plea?

9 ACC: Yes, Your Honor.

10 MJ: Do you understand that, even though you believe you are
11 guilty, you have a legal right to plead not guilty in place upon the
12 government the burden of proving your guilt beyond a reasonable
13 doubt?

14 ACC: Yes, Your Honor.

15 MJ: Take a moment now consult, once again, with your defense
16 team and tell me if you still want to plead guilty.

17 **[The accused did as directed.]**

18 MJ: All right. Do you still want to plead guilty?

19 ACC: Yes, Your Honor.

20 MJ: All right. PFC Manning, I find your plea of guilty is made
21 voluntarily and with full knowledge of its meaning and effect. I
22 further find you have knowingly, intelligently, and consciously
23 waived your rights against self-incrimination, to a trial of the

1 facts by a court-martial, and to be confronted by the witnesses
2 against you. Accordingly, your plea of guilty is provident and is
3 accepted. However, I advise you may request withdraw your plea at
4 any time before sentence is announced and, if you have a good reason
5 for your request, I will grant it.

6 Now, is the government going forward on the offenses to
7 which the accused has plead not guilty?

8 TC[MAJ FEIN]: Ma'am, given the seriousness of Private First
9 Class Manning's charged conduct, the United States does intend to go
10 forward with all the charges as originally charged.

11 MJ: All right, then, in that case the Court is not going to
12 make findings with respect to the guilty pleas at this point. PFC
13 Manning, as we discussed earlier, what that means is the government
14 is going to go forward with the charges as charged. Nothing you've
15 said today can be used by the government when they prove the case,
16 however, the elements that you've established in your plea, the
17 government does not have to present any proof of those. Your plea
18 has established those elements so we just have the remaining elements
19 that are left, we've got the outstanding issue that the parties are
20 briefing with the 793(e) offenses as to the tangible/intangible
21 element that we discussed earlier, whether it's only intangible that
22 requires the reason to believe additional elements or whether both
23 do. So, that's -- will be decided at the next Article 39(a) session.

1 Do we -- and, once again, the only findings I can make with
2 respect to the specifications you've pled guilty to are guilty to
3 what you've pled to or guilty to the greater offenses if the
4 government has proven them.

5 Does either side believe that we need to address anything
6 further with respect to PFC Manning's plea?

7 CDC[MR.COOMBS]: No, Your Honor.

8 TC[MAJ FEIN]: No, Your Honor.

9 MJ: All right. Is there anything else that we need to address
10 today other than discussing what's going to go on tomorrow?

11 TC[MAJ FEIN]: No, ma'am.

12 CDC[MR.COOMBS]: No, Your Honor.

13 MJ: All right. As I understand, the parties and I met in an
14 R.C.M. 802 conference earlier today. Once again, that's a conference
15 where I talk to the parties about logistics and how the case is going
16 to proceed and we have a couple of things still left on the agenda.
17 One of those is the government has filed a motion under M.R.E. 505(i)
18 which is our rule governing the use of classified information for an
19 *in camera*, closed proceeding concerning the use of certain classified
20 information at trial. I believe the way the parties have desired to
21 handle that would be to begin with an open session to discuss that
22 and then move into a closed session. Am I correct on that?

23 CDC[MR.COOMBS]: That's the defense's desire, Your Honor.

1 TC[MAJ FEIN]: Yes, ma'am, but the United States is still doing
2 some research to figure out to what extent the open session would be
3 -- well, to what extent -- how much information would be litigated in
4 the open session.

5 MJ: All right. That's fine. Just at least introduce the
6 motion in redacted form what the defense has asked the Court to do --
7 --

8 TC[MAJ FEIN]: Yes, ma'am.

9 MJ: ---- and that's also in redacted form, I believe. So, I
10 believe we can, at least put that on the record.

11 TC[MAJ FEIN]: At a minimum, absolutely, ma'am.

12 MJ: Okay. And then the Court will make its findings now with
13 respect to the closed session.

14 In accordance with R.C.M. 806(b)(2) and M.R.E. 505(i) and
15 the First and Sixth Amendments to the Constitution, the Court finds
16 and rules as follows:

17 At the request of the Court -- I'm sorry, the government
18 has moved for an *in camera*, closed proceeding pursuant to M.R.E.
19 505(i)(2) regarding the use of certain classified information at
20 trial. The Court has examined the filings by the parties as well as
21 the *ex parte* and classified filings by the government and finds that
22 the Article 39(a) session, on closure and motion to close the
23 courtroom for specified testimony, that the government has

1 demonstrated that disclosure of classified information at issue could
2 reasonably be expected to cause damage to the national security in
3 the degree to warrant classification under executive order, statute
4 or regulation. Closure of the hearing is narrowly tailored to
5 protect that overriding national security interest and the hearing
6 regarding this issue has been -- will be open to the maximum extent,
7 tomorrow, to at least introduce the issues.

8 And that there are no other alternatives other than a
9 closed hearing; the rule actually provides for a closed hearing in
10 this case to discuss the use of that particular information at trial.
11 So, the Court is going to grant the government's motion for a closed
12 hearing tomorrow in addition to the original open hearing.

13 And I believe Mr. Coombs also wanted to set forth the
14 defense views on the -- going back to the Article 104 issue that we
15 talked about, the *Winthrop* treatise that the government has provided?

16 CDC[MR.COOMBS]: Yes, Your Honor. I just have a brief addition
17 to that that I can add to the 505(i) open session argument.

18 MJ: So, what we'll probably do is we'll begin with that, the
19 *Winthrop*, and then we'll move into the 505(i). The parties and I
20 have agreed -- we're going to start at 10 o'clock tomorrow, is that
21 what the agreement was?

22 TC[MAJ FEIN]: Yes, ma'am.

23 MJ: Is that still what you'd like to do?

1 CDC[MR.COOMBS]: Yes, Your Honor.

2 MJ: So, we're going to open the session at 10 o'clock. The
3 parties and I are going to meet a little bit earlier than that
4 because we're going to go over the trial calendar. Some new things
5 have been added to include the motion we just talked about for the
6 next session. So, we're going to look at the dates and make sure the
7 current case calendar -- that the dates are a good idea or maybe we
8 need to add some dates or take some dates out; we're not sure. But,
9 when we open the court, tomorrow, at 10 o'clock, what we'd like to do
10 is have a way ahead so we can announce that to the public and
11 everybody knows what's going to be going on in the case.

12 Is anything else that we're going to address tomorrow that
13 I've neglected to mention?

14 TC[MAJ FEIN]: Ma'am, just the United States also intends to --
15 at the beginning of the 505(i), just provide more historic references
16 as far as Article 104. And then also, we will capture for the record
17 the 505(h) filing and both parties are going to meet this afternoon
18 after this session closes.

19 MJ: All right. Is there anything else we need to address
20 before we recess the court for the evening?

21 TC[MAJ FEIN]: No, Your Honor.

22 CDC[MR.COOMBS]: No, Your Honor.

1 MJ: All right. Court is in recess until 10 o'clock tomorrow
2 morning.

3 [The Article 39(a) session recessed at 1724, 28 February 2013.]

4 [END OF PAGE]

1 [The Article 39(a) session was called to order at 1004, 1 March 2013.]

2 MJ: This Article 39(a) session is called to order.

3 Let the record reflect all parties present when the court
4 last recessed are again present in court.

5 Major Fein, do we have any housekeeping items to set forth
6 for the record?

7 TC[MAJ FEIN]: Yes, ma'am. Your Honor, the prosecution and
8 defense met last night and this morning. During the 802 this morning
9 we came to an agreement on the way forward for the defense's M.R.E.
10 505(h) notice. What has been now marked as Appellate Exhibit 502 is
11 the prosecution's notice to the Court on our understanding of the
12 obligations and process that the defense's M.R.E. 505(h) notice.

13 To summarize this filing, Your Honor, the United States
14 agrees that the notice is adequate with two exceptions, but overall
15 it's adequate and the prosecution can use this to go to the equity
16 holders to ensure there is proper authority for the defense to elicit
17 that information from the appropriate witnesses. There are two
18 witnesses that the prosecution requested more information from. The
19 defense agreed to provide that no later than 8 March 2013.

20 Also, the prosecution requested notice from the defense on
21 whether they intent to share the ONCIX damage assessment with any
22 witness because that was annotated. The defense asked for the

1 prosecution's assistance in giving them access again to review that
2 document. That will happen before 8 March 2013, as well.

3 Finally, Your Honor, the United States intends to process
4 the defense's M.R.E. 505(h) notice, dated 14 December 2012, in
5 reference to the three difference damage assessments, and both
6 parties agreed that they would work out a stipulation of fact in lieu
7 of using those assessments. The parties are going to start working
8 on those stipulations. However, concurrently if the parties do not
9 agree on the stipulations, the prosecution is going to continue
10 working to get approval for those documents to be used at the trial
11 according to the original notice given by the defense.

12 Finally, Your Honor, both parties agree that even if the
13 government stipulations are not agreed upon and the government moves
14 or uses the original notices, that the defense agrees that PFC
15 Manning would not necessarily be given access to the originals
16 regardless if privileges were invoked or not by the government. With
17 that understanding, the government is going to continue moving
18 forward to get all this done according to the case calendar.

19 MJ: Defense, anything to add to that?

20 CDC[MR. COOMBS]: No, ma'am.

21 MJ: All right. For the record, I did want to put forth the
22 scheduling order. The parties and I met this morning in an R.C.M.
23 802 conference. Once again, that's a conference where I meet with

1 the parties to talk about logistics and scheduling issues in the
2 case. Bottom line is the case calendar has not changed. There are
3 certain things that have been added to it that may be addressed at
4 the subsequent Article 39(a) sessions, but the calendar as scheduled
5 has not changed. The next Article 39(a) session will be the 10th
6 through the 12th of April 2013, that will be followed by another
7 Article 39(a) session on the 21st through the 24th of May 2013, and
8 trial will continue as scheduled to begin on the 3rd of June 2013.

9 Does either side desire to add anything to that?

10 CDC[MR. COOMBS]: No, Your Honor.

11 TC[MAJ FEIN]: No, Your Honor, and that calendar that you signed
12 is marked as Appellate Exhibit 503.

13 MJ: All right. I believe next on the agenda is the defense's
14 wish to address the government's submission with respect to the
15 Article 104 issue that we have before us; whether giving intelligence
16 to the enemy is a form of correspondence or a subset of communication
17 to the enemy. That is an issue the Court has taken under advisement
18 and the government has submitted something -- a historical document,
19 by Winthrop, *Military Law and Precedence*. The defense wished to
20 address that today.

21 CDC[MR. COOMBS]: Yes, Your Honor. Again, the defense's
22 position is that Article 104 does not have the required element of
23 proven receipt by the enemy. It's not listed anywhere within Article

1 104. There is no case law that says that receipt by the enemy is
2 required for giving intelligence to the enemy under Article 104. If
3 this were, in fact, an element, you certainly would expect to see it
4 within Article 104.

5 The defense did want to address some of the issues that the
6 government has raised recently with its additional filings.
7 Obviously the government's position is premised in part on the
8 definition of intelligence in the *Benchbook*. I won't cover that
9 again, but the defense's position is clear that that's not
10 controlling. Intelligence is a noun and it's inconsistent with the
11 meaning given to it in the Manual.

12 For Winthrop -- when you look at Winthrop, ma'am, if you
13 have that in front of you, if you look at page 633.

14 MJ: Let me turn to that quickly here.

15 CDC[MR. COOMBS]: Sure, ma'am.

16 MJ: All right.

17 CDC[MR. COOMBS]: 633 and then carrying over into 634, is
18 where *Winthrop* talks about the offense of corresponding with the
19 enemy and then also giving intelligence to the enemy. When you look
20 at the language within corresponding with the enemy, it contains
21 what's now basically within the *Manual for Court's-Martial*, that
22 communication does not have to be received, that intelligence must be
23 true at least in part. In other words, the drafters of the Article

1 104, more appropriately, looked to *Winthrop* at least and modeled
2 Article 104's language with regards to communicating with the enemy
3 after what *Winthrop* wrote here. When it comes to giving intelligence
4 to the enemy, the drafters of Article 104 chose not to replicate
5 *Winthrop*, which they easily could have done. That must be taken as
6 deliberate and not just an oversight. The reason why is that it is
7 inconsistent to say that communicating doesn't require receipt, but
8 giving intelligence does. It's inconsistent particularly when the
9 drafters, unlike *Winthrop*, of Article 104 chose to view giving
10 intelligence as a subset of corresponding with the enemy. They
11 actually add that to communicating with the enemy. *Winthrop*
12 actually, even though the government cited it as authority for their
13 position, is probably the better authority for the defense's
14 position, that actual receipt is not required by Article 104.

15 Related to this argument of *Winthrop*, the government places
16 emphasis on the plain meaning of the word "giving." They say, "well
17 giving implies receiving, or they make the argument that even if it's
18 not an element, then at the very least receiving", would be somehow
19 relevant through giving.

20 The problem with that logic is when you apply that to
21 communicating, communicating receipt implies a mutual receipt. Like
22 if I'm communicating with you, if I send you something by e-mail,
23 that implies a receipt in order to have that communication.

1 MJ: Let me just stop you there Mr. Coombs.

2 CDC[MR. COOMBS]: Yes, Your Honor.

3 MJ: Again, I'm seeing two issues here. I'm seeing is receipt
4 required and is receipt relevant?

5 CDC[MR. COOMBS]: Right, Your Honor.

6 MJ: In the communication case, what's the defense's position --
7 the Manual clearly says that receipt is not required, is it relevant?

8 CDC[MR. COOMBS]: No, Your Honor, and the reason why -- that
9 actually also is proof that the drafters of 104 chose to ignore what
10 Winthrop wrote. The idea is Article 104, the overarching theme of
11 104 is absolute non intercourse with the enemy, unless you have
12 authority to give information to the enemy or communicate with the
13 enemy. The theme of 104 is you don't speak to the enemy unless
14 authorized. It would be inconsistent to say, "Well, you know, we're
15 not going to require any receipt by the enemy when you're trying to
16 communicate, but we are going to require receipt if you give
17 intelligence to the enemy." I think it's clear that receipt by the
18 enemy is not required as an element.

19 When it comes to the second part, as the Court said that
20 the argument of actual relevance, it's also equally clear that it's
21 not relevant because Article 104 says it's not relevant. It's not
22 relevant because ----

23 MJ: Well, Article 104 doesn't say it's not relevant.

1 CDC[MR. COOMBS]: Well, it does from the standpoint of saying
2 that receipt is not required. The actual offense is committed as
3 soon as the correspondence leaves from the accused. That is --
4 that's the area of concern. When it comes to here, like if I'm
5 carrying forward with the government's argument of, "We want to show
6 that there was a receipt", is that somehow relevant to show that he
7 gave? And that's the way we want to cannon this. That's kind of the
8 after the fact argument that didn't work for the defense when it came
9 to the damage assessment. But here if we take a look at what the
10 government's evidence is, they're trying to offer the Osama Bin Laden
11 raid that occurred on 1 May 2010. They chose to charge PFC Manning
12 with an Article 104 violation on 1 March -- excuse me, it happened on
13 1 May 2011. They chose to charge PFC Manning on 1 March 2011, for
14 the 104 violation. This decision by the government to charge 104
15 occurred prior to the evidence that they're trying to use right now
16 to prove apparently the giving. That is, again ----

17 MJ: Well, let me just ask you there. 1 May 2011, is that the
18 date of ----

19 CDC[MR. COOMBS]: The actual raid, ma'am.

20 MJ: The raid, at least as I understand it, recovered something
21 that was already there?

22 CDC[MR. COOMBS]: That is correct. And there -- and again,
23 the issue would be from the witnesses' testimony or whatnot, when

1 that information was there, certainly, that might come into some
2 play. The problem is it's still the receipt by the enemy is, if at
3 all, is after the issue that we're actually concerned about, and
4 that's what the actual knowledge. The government's argument is that
5 this was some -- this is relevant to actual knowledge, and this is
6 relevant to cause to be published for Spec 1 of Charge II.

7 The defense doesn't see any way you can make an argument
8 for caused to be published, but with regards to actual knowledge,
9 again, the timing -- the time period that we're concerned about is
10 what did PFC Manning know at the time that he sent the information to
11 WikiLeaks. That's what's relevant, not whether or not the enemy
12 actually ultimately received it. The enemy can receive something,
13 and PFC Manning can have actual -- no actual knowledge that the enemy
14 would ever get it, and therefore, that's not relevant at all.

15 The defense's position is that it's not only not an
16 element, but the -- and we look at Winthrop, which is primarily the
17 government's argument, the fact the Manual did not follow Winthrop
18 when it came to giving intelligence, but they did when it came to
19 communicating, indicates that was a conscious decision of the
20 drafters of Article 104. Then just clearly when the Court looks at
21 what is relevant for actual knowledge, it is at the time. This is
22 clearly after the fact evidence. Therefore, the defense's position

1 is this would not be relevant on merits. It could be relevant on
2 sentencing though.

3 All right. Thank you, Mr. Coombs. I believe I asked you
4 this the other day, but I'm going to ask it once again. In my draft
5 instructions I have the instruction that's in the *Benchbook*, that the
6 communication has to be received by the enemy. Is the defense
7 specifically waiving that instruction?

8 CDC[MR. COOMBS]: Yes, Your Honor.

9 MJ: Government?

10 TC[MAJ FEIN]: Ma'am, may I brief from counsel's table?

11 MJ: Mm-hmm.

12 TC[MAJ FEIN]: Ma'am, directly to the points Mr. Coombs is
13 arguing. The MCM as early as 1917, and I understand now we will need
14 to provide the Court this information ----

15 MJ: Thank you.

16 TC[MAJ FEIN]: The government downloaded last night from the
17 Library of Congress, but every version of the *Manual for Court's-*
18 *Martial* since 1917 has used essentially the exact same or a slight
19 variation of the language of Article 104 that we find today. In
20 fact, the 1917 version, Your Honor, giving -- under aiding the enemy,
21 Your Honor, it breaks it into four categories: relieving the enemy,
22 harboring or protecting the enemy, holding correspondence with the
23 enemy and giving intelligence to the enemy. Four subsections.

1 Under giving intelligence to the enemy, Your Honor, it lays
2 out two elements: that the accused normally conveyed to the enemy
3 certain information; and the second, the information was true, at
4 least in part.

5 The two elements of Article 104, have essentially been the
6 same with slight variation of language since before the 1920 reprint
7 of Winthrop, up to today's codified 104.

8 Winthrop is the digest of the time; it interpreted what was
9 in existence at the time. Unfortunately, Your Honor, directing the
10 Court to Winthrop page 634, the exact language Winthrop uses, "It is
11 necessary that the enemy shall have been actually informed. If
12 therefore the intelligence fails to reach him, this offense is not
13 completed, though the offense of holding correspondence may be."
14 There is a footnote, footnote 10. The United States has spent much
15 time trying to find footnote 10, the actual source, digest 42. We
16 will continue even after today with the help hopefully of the JAG
17 Corps historian and anyone else willing to assist in this research.
18 But the footnote specifically says, "It is essential to the offense
19 of giving intelligence to the enemy that the material information
20 should actually be communicated to him."

21 MJ: What's the government's position with respect to the
22 defense argument that the Manual drafters codified Winthrop's

1 positions with respect to communicating with the enemy, not giving
2 intelligence to the enemy?

3 TC[MAJ FEIN]: Your Honor, the drafters codified -- memorialized
4 exactly what the state of law has been this whole time. Winthrop's
5 position on communication can't -- you cannot have absolute
6 intercourse with the enemy, you cannot be -- in the ranks of the
7 enemy is absolute intercourse. It's not a completion, that's
8 communication. Giving intelligence is a completely separate offense.
9 The Manual today and even the *Benchbook*, the government argues is in
10 line with Winthrop, even for that regard. The language is very
11 similar, and that's why it's specifically used for correspondence --
12 excuse me, communication.

13 MJ: But the Manual is -- the article is silent about whether
14 receipt is required or not for giving intelligence.

15 TC[MAJ FEIN]: It is. It is, Your Honor, because -- the United
16 States argues that it has been silent since day 1, by at least the
17 earliest version of the Manual of 1917. It has been silent on that
18 because it's a simple definition -- giving. To give -- Your Honor,
19 again according to the *Black's Law Dictionary*, to give is to
20 voluntarily transfer property to another. To another. It's not
21 simply to put it out there for anyone. It's to give, voluntarily
22 transfer, property to another.

1 To transfer, according to *Black's Law Dictionary*, Your
2 Honor, is any motive disposing or parting with an asset or interest.
3 Just the plain meaning of that -- that word, today and all the way
4 back; I mean, we could go to property. If the Court wants these
5 targeted briefs that are not necessarily military justice, the
6 government can do this. But the plain meaning of "give" from back in
7 1917 forward has been to have property to delivered to another;
8 otherwise, a giving has not occurred; a transfer to another has not
9 occurred. There would be no reason for the drafters of the current
10 Manual to change what has been the law up to this point, for this one
11 area.

12 There has been an exception made, that is clearly outlined
13 for communicating, which has no response or receipt by the enemy is
14 required, but that's for communicating. If no receipt or response
15 was required for giving, the drafters would have incorporated that
16 in. What the government -- or the defense is arguing is the lack of
17 this information, therefore -- it is not the definition, but again,
18 the -- what existed in 1917, exists today in essence. The only
19 authority on it, that either side can find, Winthrop, says that is
20 what it was in 1917 -- or excuse me, 1920, when it was reprinted.
21 MJ: Well, does the government -- I mean, the Court has always
22 benefited by being educated with respect to these issues. Is the
23 government proposing filing additional briefs?

1 TC[MAJ FEIN]: Your Honor -- Yes, Your Honor, the government
2 will attempt to find digest 20 again. It wasn't at the Library of
3 Congress; we'll try somewhere else.

4 MJ: So does the government then want to follow the filing
5 calendar with respect to these briefs for the next Article 39(a)
6 session?

7 TC[MAJ FEIN]: May I have a moment, Your Honor?

8 MJ: Yes.

9 [Pause.]

10 TC[MAJ FEIN]: Ma'am, may we have a recess in place?

11 MJ: Yes. Court is in recess in place.

12 **[The Article 39(a) session recessed at 1024, 1 March 2013.]**

13 **[The Article 39(a) session was called to order at 1024, 1 March**
14 **2013.]**

15 MJ: Court is called to order. Let the record reflect all
16 parties present when the Court last recessed are again present in
17 court.

18 TC[MAJ FEIN]: Ma'am, the United States proposes that the same
19 as the -- we have two other target briefs on the Court calendar that
20 the government will -- and defense is welcome as well, to have a
21 targeted brief for that same date, 29 March 2013.

1 MJ: All right. Defense, do you want to file a brief at the
2 same time they do or do you want to file a brief in response to them
3 or do you not want to file a brief at all?

4 CDC[MR. COOMBS]: Right. The defense believes our position is
5 clear, so I don't believe an additional brief is required. If the
6 government raises something new in their brief, then we'll reply to
7 that.

8 MJ: Why don't we do this then, let's plug in the government
9 brief into the trial calendar. We'll just -- we'll put a corrected
10 copy of the trial calendar as the next Appellate Exhibit in line so
11 we don't have to create new Appellate Exhibits and we'll add that.
12 Defense, if you can just notify me via e-mail of your desire to
13 submit a brief or not, because it will depend on the Court's timing
14 for the ruling then. I'm not going to rule on the issue before I
15 receive the government's brief. If the defense wants to file
16 something new, let me know so I can wait for that too.

17 CDC[MR. COOMBS]: Yes, Your Honor.

18 TC[MAJ FEIN]: Yes, ma'am.

19 MJ: Is there anything else on the 104 issue? Mr. Coombs, do
20 you want to reply?

21 CDC[MR. COOMBS]: Yeah, just -- just one issue that the
22 government indicated. They said no authority other than Winthrop.
23 When you look at the Manual, this just repeats our position, but what

1 is not in Winthrop, but what is in the Manual, is the fact that they
2 did say giving intelligence to the enemy is a particular case of
3 corresponding with the enemy. The ----

4 MJ: Well, Winthrop says that too, right?

5 CDC[MR. COOMBS]: True, but from the standpoint of -- under
6 giving intelligence to the enemy, then communicating with the enemy
7 is correspondence as well. What they're basically saying is the
8 communicating with the enemy involves a correspondence. If the
9 government wants to use plain meaning of words, then if plain meaning
10 within the Manual says that giving intelligence to the enemy is a
11 particular form of correspondence, made more serious by the fact that
12 you have intelligence in your correspondence, then you have to read
13 everything consistently. That's where it says the offense is
14 complete the moment the communication, correspondence or intercourse
15 issues from the accused. If you want to play the plain meaning of
16 the words game then you have to play it consistently. Here then
17 there would be no need to add in the giving intelligence doesn't
18 require actual receipt because it's clear from reading the plain
19 language within Article 104 that it's not required.

20 MJ: One thing I'd like you to -- well, it was the *Anderson*
21 case, I believe, that the government brought up yesterday where they
22 had two separate specifications that the *Anderson* court ruled were
23 not multiplicitous or an unreasonable multiplication of charges, the

1 giving receipt and the communication of the receipt of the
2 information. Am I correct in saying that at least factually, the
3 information that was at issue was different for each of the
4 specifications, or did they involve the same information?

5 CDC[MR. COOMBS]: It was different, Your Honor.

6 TC[MAJ FEIN]: Your Honor, we'd have -- we'd put that in our
7 brief.

8 MJ: Yeah. Please do that. As I remember reading the case, I
9 thought it was different information, so if it was different
10 information there would be potentially a different ground for not
11 holding something unreasonable multiplication of charges. It was
12 identical information and the Court came back and said, "No. No.
13 No. They're two separate specifications charged," that would be a
14 different rationale for upholding that.

15 TC[MAJ FEIN]: Yes, ma'am, and it would also depend on what
16 happened in *Dickenson* as well, so we'll have to brief that as well so
17 the Court can reference that.

18 MJ: I would appreciate that. Thank you.

19 TC[MAJ FEIN]: Yes, ma'am.

20 MJ: Is there anything else we need to address at this time with
21 respect to the Article 104 offense?

22 CDC[MR. COOMBS]: No, Your Honor.

23 TC[MAJ FEIN]: No, Your Honor.

1 MJ: And once again, the Court's not going to rule on that until
2 I receive the additional brief from the government.

3 Next on the agenda we have the M.R.E. 505(i) hearing. I
4 made findings yesterday afternoon that the government has met its
5 burden to proceed into a closed session with respect to some of that
6 involves the use of classified -- potential classified information at
7 trial. We're going to begin by setting forth the issues on the
8 public record.

9 Major Fein, would you like to proceed?

10 TC[MAJ FEIN]: Your Honor, the United States motions the Court
11 for an in camera proceeding under M.R.E., Military Rule of Evidence,
12 505(i), to request the following five authorizations:

13 First, to authorize John Doe to testify under a pseudonym
14 and altered appearance.

15 Two, to limit discovery and cross-examination regarding
16 information that could reveal John Doe's true identity. Authorized
17 proposed alternatives: John Doe's background information for the
18 defense to be able to place John Doe in the proper setting as a
19 witness.

20 Limit discovery and cross-examination by precluding the
21 defense from questioning John Doe regarding his training for the
22 specific mission, preparation for the mission or details of the

1 mission, execution outside of the scope of direct examination, solely
2 focused on evidence collection and authentication.

3 Finally, to authorize John Doe's testimony at an offsite
4 secure location.

5 Your Honor, in furtherance of this motion, the Secretary of
6 Defense claimed that information privilege over information related
7 to the identity of John Doe and the acting Director of the Central
8 Intelligence Agency has claimed the classified information privilege
9 over information related to the still classified details of the Osama
10 Bin Laden raid.

11 At this time, Your Honor, the United States requests the
12 Court move into a closed session for argument.

13 MJ: All right. Let me -- Defense, would you like to put
14 something in the open session?

15 Government, if you hear anything going where we're not
16 supposed to go, Mr. Prather, same thing, let me know.

17 TC[MAJ FEIN]: Yes, ma'am.

18 CDC[MR. COOMBS]: Ma'am, for the benefit of the government and
19 Mr. Prather, I intend to do my entire argument in open court. I
20 don't anticipate anything I'm going to say would require us to go
21 into a closed session, but I'll speak slowly, Mr. Prather.

1 MJ: Actually, why don't you do this to make it easier. Is
2 there a way to turn that podium around so Mr. Prather can see you a
3 little bit?

4 CDC[MR. COOMBS]: There's not, Your Honor.

5 [Mr. Prather]: Your Honor, I'm fine.

6 MJ: Okay. You're good? Okay. Go ahead.

7 CDC[MR. COOMBS]: Your Honor, the government believes,
8 apparently, that due to claiming a privilege over Mr. Doe's identity
9 and over some still, I guess, classified information regarding the
10 UBL raid, that the defense is not even entitled to conduct a pretrial
11 interview of Mr. Doe. That has been the defense's main problem so
12 far because there's no case that has been cited by the government
13 that would support such in proposition. In fact, if the Court looks
14 at *Lonetree*, the case that the government has cited throughout it's
15 505(i) filing, the appellant in *Lonetree* was permitted to conduct a
16 pretrial interview of the Mr. Doe witness.

17 MJ: Was there a privilege claimed in *Lonetree*?

18 CDC[MR. COOMBS]: Yes, Your Honor.

19 MJ: To the same extent that it is claimed here?

20 CDC[MR. COOMBS]: At least from the identity, the same issue
21 of -- they didn't want to disclose the identity of Mr. Doe to the
22 defense or background information. If the Court -- just so you have
23 the ability -- it's under footnotes 12 and 13 -- well, not 12 and 13

1 now, but in my *Westlaw* printout, it's under 12 and 13 just below the
2 holding, where they talk about the defense conducting a pretrial
3 interview of Mr. Doe.

4 MJ: Let's wait -- before we get there, let's talk about --
5 let's -- I have page -- I think I have a *Westlaw* printout too. I'm
6 on page 12. Where are we?

7 CDC[MR. COOMBS]: Page 15, ma'am.

8 MJ: Page 15? Okay.

9 CDC[MR. COOMBS]: It starts with, "The only time that
10 classified information concerning John Doe's observation of the KGB
11 agent became relevant ----"

12 MJ: Okay wait. Let me do this. May I hand you my copy of the
13 case you just point out where we're talking about?

14 CDC[MR. COOMBS]: Yes, ma'am.

15 [The civilian defense counsel did as requested.]

16 MJ: All right, Mr. Coombs, please don't read my notes. Let's
17 just find the case.

18 CDC[MR. COOMBS]: I'm not reading your notes, ma'am. I'm
19 smiling because I can't imagine why a printout from both *Westlaws* can
20 be different.

21 TC[MAJ FEIN]: Ma'am, if I may. There are two *Lonetree's*.
22 There is the Navy Marine Court and there's C.A.A.F.

23 CDC[MR. COOMBS]: Okay. That may be the issue.

1 MJ: I have the C.A.A.F. opinion.

2 CDC[MR. COOMBS]: Yeah. This is -- I'll just provide -- Let
3 me give this back to you [returning the documents to the military
4 judge]. I'm sorry. This is the Navy Marine Corps opinion. So it is
5 on -- if you print out *Westlaw* there, it will be on page 15, ma'am.

6 MJ: Okay.

7 CDC[MR. COOMBS]: What they say there is the only time
8 classified information concerning John Doe's observation of the KGB
9 agent became relevant was when the appellant tried to impeach John
10 Doe concerning a prior inconsistent statement that he made during a
11 pretrial interview with the defense investigator.

12 The defense's position is that PFC Manning has a sixth
13 amendment right to confront and thoroughly cross-examine any
14 government witness. The fact that a privilege has been claimed over
15 a government witness, and in this case Mr. Doe's identity and
16 apparently certain facts from the raid, may limit what we're
17 permitted to speak to Mr. Doe about, but it certainly does not limit
18 our pretrial access to him.

19 It's unclear when the government made its decision to call
20 Mr. Doe as a witness, but what is clear is that they waited until
21 505(i) filing to add him to their witness list. Due to that
22 decision, obviously the defense has never had an opportunity to
23 interview Mr. Doe. Yet, now we're in the position of having to

1 respond to a 505(i) filing without being able to interview the
2 witness. Mr. Doe should have been treated like any other government
3 witness that we've interviewed where they told the government
4 witness, "Look, here is your left and right boundary as to what you
5 can say to the defense. If they ask you about anything over here or
6 anything over here, you tell them, 'I can't answer that.'" Then we
7 would have been permitted to interview Mr. Doe. At that point we
8 could have established certain testimonial infirmities. That's where
9 the defense believes the pretrial access is a requirement.

10 MJ: Let me ask you a question, Defense. If I go forward and I
11 rule in your favor, is there objection to a telephonic interview?

12 CDC[MR. COOMBS]: No, Your Honor. No objection to that.

13 In fact, our position is it puts us in an almost *per se*
14 ineffective assistance of counsel position not to do a pretrial
15 interview of government witness and just show up at the day of court-
16 martial and go, "Well, I hope I hit something right."

17 MJ: Well, it wouldn't be ineffective assistance of counsel if I
18 ordered that you couldn't do it, right?

19 CDC[MR. COOMBS]: I would say I was ineffective. Maybe it
20 wouldn't be IAC from an appellate court. The reason why, as I said,
21 the testimonial infirmities -- in this issue here, we've got Mr. Doe,
22 who's going to come and testify about certain observations that he
23 made. Whenever a witness is testifying about observations, now the

1 issue of testimonial infirmities comes into play. For example, is
2 there any known memory issues with Mr. Doe? Does Mr. Doe have any
3 memory gaps or any known issues with his memory? This would
4 obviously go to the accuracy of the facts that he could recall and
5 certainly if he's testifying about observations, that would be
6 something that the defense should be permitted to cross-examine, if
7 he's suffering from any memory problems, in order to undercut his
8 testimony. If he does have memory problems, has anything been used
9 to try to refresh his memory? Because he's testifying about
10 observations, what other factors may undercut his ability to make
11 certain observations: timing, lighting, what issues were going on at
12 the time that he apparently grabbed the media? Whether Mr. Doe has
13 personal knowledge as to all of the matters that he's testifying to,
14 or is he relying upon what other people told him regarding a certain
15 fact?

16 The government because they only gave us Mr. Doe's name,
17 they haven't given us anything else, we don't know, is there any
18 other information out there that could be used by the defense for the
19 purpose of attacking of Mr. Doe's credibility, under M.R.E. 608(a)
20 and (b). Information that we would know if we interviewed the
21 witness and asked him about certain things like, does he have an
22 Article 15? Did that Article 15 involve untruthfulness? That would
23 be a piece of information we could use to undercut his creditability.

1 Whether there is any information after interviewing him that would
2 show a motive to fabricate or a bias or a prejudice under M.R.E.
3 608(c). It's unlikely, but whether or not he has any prior
4 conviction that would qualify under M.R.E. 609.

5 This is more likely, what previous statements has he made
6 and is there any prior inconsistent statements based upon what he's
7 currently going to testify to that the defense should have under
8 M.R.E. 613 in order to, again, undercut his credibility.

9 These are just some of the issues that a pretrial interview
10 would allow the defense to explore and to demonstrate for testimonial
11 infirmities.

12 Now, the defense should also be permitted to question Mr.
13 Doe concerning facts surrounding the collection of the three pieces
14 of digital media, such as: Where were the items located, how were
15 the items found, what was the condition of the items when they were
16 found, whether he was the only person who collected the information,
17 what did he -- did he decide to collect some information and not
18 other information; how much was collected; is there anything other
19 than the three pieces of digital media collected that discuss
20 information from WikiLeaks; was this information in an area that
21 indicated it was not important, such as, again I doubt it, but was a
22 marked in a collection bin saying, "this stuff is not important to
23 us, it's been reviewed." These are facts surrounding the event. The

1 government said there are still some classified facts regarding the
2 UBL raid, and the defense would surmise that that has to be in their
3 ex parte filing to the Court of what those facts are. The reason why
4 I would say that is because the raid has been well documented. You
5 have a book ----

6 TC[MAJ FEIN]: Ma'am, objection. This is why we said we needed
7 to go to a closed session, Your Honor. The United States government
8 does not necessarily acknowledge publicly, formally -- just because a
9 book is written by an individual, just because a movie is made, and
10 now the defense wants to move into this area making an argument that
11 doesn't allow the government to sit here and rebut it until we moved
12 to a closed session.

13 MJ: All right. Why don't we take the rest of the argument in a
14 closed session?

15 CDC[MR. COOMBS]: On that point, I think the President of the
16 United States has acknowledged it.

17 MJ: Well, is the government arguing that the United States has
18 never acknowledged that the raid occurred?

19 TC[MAJ FEIN]: No, ma'am. The President of the United States
20 did announce that the raid occurred, but the details of who was on
21 the raid and that type of information is not necessarily public
22 knowledge. It's clear that the defense is trying to go down that
23 road right now, Your Honor, which is why we said a closed session.

1 CDC[MR. COOMBS]: That's not what I'm trying to do, Your

2 Honor.

3 MJ: All right. Let's go slowly. Mr. Prather be waiving your
4 hands in the air if you see anything we need to stop here.

5 CDC[MR. COOMBS]: What I was going to say was because there
6 has been a book about it and there's been a movie about it, detailing
7 the raid, the government should have to, in their filing already,
8 they should have to in an *ex parte* filing indicate what facts from
9 the raid are still classified, that Mr. Doe cannot testify about.

10 TC: Ma'am, this is the exact point we're trying to make. The
11 defense is trying -- is trying to tell the Court, is trying to
12 substantiate that a book written by a citizen of the United States
13 and a movie made, not by the government, somehow is legitimate.
14 That's why the government -- the government cannot argue one way or
15 another on it. The defense is using that argument, assuming that the
16 government has sanctioned those two -- formally sanctioned ----

17 MJ: Major Fein, we'll be moving into closed session and the
18 government can put its views fully on the record.

19 TC[MAJ FEIN]: Yes, ma'am.

20 CDC[MR. COOMBS]: I guess, again, that's our position. My
21 position is just that, ma'am, the government in their filing,
22 unrelated to everything else, their filing, they should indicate what
23 facts are still classified from the raid. Let's say there's 15 of

1 them. Those 15 facts would be the clear facts that the government is
2 saying under 505(i) should not be shared with the defense and are not
3 relevant and material or relevant and necessary when the witness
4 testifies. That also would give the left and right boundary for what
5 Mr. Doe could talk to us about. If the facts are not one of those 15
6 facts that is still classified, then it should be fair game for us to
7 talk to Mr. Doe. Using my example, let's say what is not still
8 classified is where the items were found. I should be permitted to
9 Mr. Doe on the telephone, "Mr. Doe, where did you find those items?"
10 "Well, I found them in a trash can." "Okay. Where was the trash can
11 located?" "The front of the door." "Was there anything on top of
12 the items?" "Yes, there was." "What else was on top of them?" It
13 could show some facts that the defense could argue for favorable
14 evidence for us. If that is still a fact that's classified, then the
15 government should be telling the Court that specific fact and the
16 reason why and it could be just as simple as the privilege has been
17 claimed.

18 Once we talk to Mr. Doe, we'll know whether or not there
19 are certain facts about him that we believe are relevant and
20 necessary and be able to articulate that to the Court, or we'll be
21 able to know based upon talking to him and when he says, "I can't
22 answer that question," we'll be able to know what facts are relevant
23 and necessary to argue, again, that, you know, Your Honor, you should

1 require the government to allow us to go into. But until we speak to
2 him, we can't do that. That's just the defense's position. We
3 should be allowed to do a pretrial interview, Mr. Doe should know
4 what his left and right boundaries are, and, based upon that, and
5 after speaking to him, we might not have a problem with yes, we don't
6 need to know his identity. Or, once the government has complied with
7 and *Brady*, *Jencks* or *Giglio* requirements, which they haven't at this
8 point or at least given us any notice that any of that exists, then
9 we'll be able to say, "Okay. We have no real issue with this." We
10 might even stipulate to this witness.

11 MJ: Mr. Coombs, you cited a litany of factors that you would be
12 seeking to do in a pretrial interview. I tried to take copious notes
13 during that.

14 CDC[MR. COOMBS]: Sure.

15 MJ: It would really benefit the Court if you could just -- now,
16 it doesn't have to be a formal filing, just write down what you
17 basically just said so I have that in front of me and I can think
18 about it.

19 CDC[MR. COOMBS]: Yes, Your Honor. I'll send that as an e-
20 mail to you today.

21 MJ: Government, is there anything you'd like to address in open
22 session?

1 TC[MAJ FEIN]: Yes, ma'am. Ma'am, other than access to
2 pretrial, the information that the -- that litany of factors that the
3 defense will provide, written down that the United States contends
4 they should probably be -- that information be made available to them
5 at some point, and that would be appropriate for cross-examination.
6 In the filing actually the defense had, the government said they
7 would provide any *Brady*, *Giglio*, *Jencks* -- any of the
8 constitutionally protected information to the defense. The
9 government has already acknowledged that they're entitled to that
10 information, and as the Court knows in its *ex parte* filings, the
11 government has proposed alternatives to some of it, and actually the
12 full information. The government even notified the defense last
13 night, although continuously we have a binder of *Jencks* material and
14 *Giglio* material for the defense to inspect, we had material sitting
15 in a binder for this witness and other witnesses already for the
16 defense to look at.

17 MJ: So there's material in a binder about this witness?

18 TC[MAJ FEIN]: No, Your Honor. There is material in a binder
19 that would be qualified as either *Jencks* or *Giglio*.

20 MJ: Have I seen it?

21 TC[MAJ FEIN]: Not the *Jencks* portion, Your Honor.

22 MJ: Have I seen the *Giglio* portion, is there any?

1 TC[MAJ FEIN]: No, there is no *Giglio* in a binder, Your Honor.
2 The *Giglio* is presented to the Court *ex parte*. Everything the
3 constitution protected -- I know we're going to litigate later the
4 Sixth Amendment right to confrontation, but all of that the
5 government has been -- is willing and has explained in the motion,
6 that the defense is entitled to and should receive either in its
7 original form or some variation.

8 MJ: Well, what's the government objection to a defense
9 telephonic interview, which wouldn't reveal the identity of anybody,
10 it would just be a voice?

11 TC[MAJ FEIN]: Well, the problem, Your Honor, is, is that since
12 the United States is claiming privilege over this DoD operator
13 identity and certain background information and definitely
14 information involving the actual military operation, there is no
15 Court there to mediate or arbitrate what's an appropriate question
16 within the scope of the privilege and what is not. If the defense is
17 able to have just a phone call, it does -- that would conceivably be
18 able to protect one of the issues that has -- the privilege has been
19 claimed about, the actual identity. Sure -- I don't -- we could even
20 obfuscate the voice to not be able to identify the individual, but it
21 still doesn't address the content and how to protect the content.

22 MJ: Defense, if you did a telephonic interview, is there any
23 objection to having a government representative present?

1 CDC[MR. COOMBS]: No, Your Honor. In fact, every witness
2 we've interviewed -- that's why Mr. Doe is the exception. Every
3 other government witness we've had this similar issues and it's been
4 -- there's been a government representative there, usually a legal
5 counsel from that agency who's sitting there and stands up and say,
6 "No, you can't go into that." That's why this witness should be
7 treated no differently, except maybe telephonic.

8 TC[MAJ FEIN]: The United States contests that, Your Honor, and
9 we can get more into that -- of why this witness is different.
10 Clearly, he's different just on the face that there's been a
11 privilege invoked and personal and national security -- personal
12 safety and national security is involved with this witness versus any
13 other.

14 MJ: All right. I assume the government, in light of those
15 general responses, would like to discuss this in the closed session?

16 TC[MAJ FEIN]: Yes, Your Honor. Your Honor, before we move into
17 closed session, just for the record, the counsel would also like to
18 have one trial counsel during closed session be absent and the other
19 be present once we move into closed session.

20 MJ: All right. Who would that be?

21 TC[MAJ FEIN]: Captain Overgaard would be absent and Captain
22 VonElten would be present.

INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.
2. Judge advocate's review pursuant to Article 64(a), if any.
3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.
4. Briefs of counsel submitted after trial, if any (Article 38(c)).
5. DD Form 494, "Court-Martial Data Sheet."
6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.
7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

- a. Errata sheet, if any.
- b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.
- c. Record of proceedings in court, including Article 39(a) sessions, if any.
- d. Authentication sheet, followed by certificate of correction, if any.
- e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
- f. Exhibits admitted in evidence.
- g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
- h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.